

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.693/92

ASHA CHAD.....PLAINTIFF

VERSUS

ATTORNEY GENERAL..... RESPONDENT

BEFORE: THE HON. MR. JUSTICE I. MUKANZI

RULING

This ruling arises as result of the preliminary objection by Mr. E.K. Ssempebwa from Ssempebwa and Katende Advocates counsel for the Applicant to the effect that I disqualify myself from entertaining this application. The back ground of this preliminary objection is simply that Mr. Sekandi from M/S. Sekandi and company Advocate's counsel for the appellant/plaintiff filed civil suit No. 673/1992 against the decision of the minister of finance planning and economic development when he turned down the application by the appellant for repossession of the property registered as LRV folio 8 plot 2 Impala avenue. The matter was brought under Expropriated property Act No. 9 of 1982 Section 14 and Regulation 15 the expropriated property Act (Repossession and Disposal) Regulations 11.9/83 No.6.

The Attorney General, the Respondent was represented by a State Attorney from the Attorney General Chambers Ministry of Justice in the names of Busaba.

When the appeal came for hearing there were about two matters and Serwanga from Ssempebwa and Katende Advocates came in and raised a preliminary objection. He submitted that they had been instructed by the owner of the suit property one Kiwanuka to appear in the proceedings and pursue his interest in relation to his property. He submitted that his client Hillary Kiwanuka was

registered proprietor and any decision arrived at in this court was likely to affect him and requested for an adjournment so the he is joined as a party to the proceedings.

Mr. Sekandi who appeared for the Appellant/plaintiff opposed the adjournment whereas Mr. Dusabe who appeared for the Respondent the Attorney supported the application. The court had to adjourn for a ruling.

At that particular moment the issues on which decisions were required were whether the application for adjournment sought by Serwanga and supported by Dusabe were maintainable and the second matter was whether Serwanga had locus standi the, in the matter before the court.

In my ruling I was of the view that Hannah Kiwanuka whom Serwanga craved to be joined as a party was not an aggrieved party by the decision of the Minister of finance. I refused the application for adjournment as argued by Mr. Serwanga since I thought he had no locus standi. In a similar way I refused the application for adjournment on behalf of the respondent because I was satisfied that the Attorney General had been accommodated on a number of occasions and I was convinced that it was high time the matter came up for hearing. I fixed a date with a view to entertain the Appeal.

When the matter came before me again there was an application by Mohan Musisi Kiwanuka filed on his behalf by Messrs Katende, Ssempebwa and co. Advocates seeking for an order to be joined as a party to the Proceedings. Before the application was heard as earlier on stated learned counsel appealing for the applicant raised a preliminary objection He submitted that I disqualify myself from entertaining the application.

Mr. Ssempebwa argued that the reason for the application was not because I had an interest in the matter but it was because in an earlier application for adjournment made before me by Mr. Sekandi the counsel for the appellant/plaintiff ushered in an objection for the adjournment. At the same time he made argument which went to the merits of the application although that was not necessary. As a result in my ruling where I refused an adjournment that I made comments in substance to be decisions in the sense that appeal be argued on that day I was referred to page 5 of the typed ruling and for the

reasons with due humility the counsel submitted that he felt it would not be appropriate for me to hear the substantive application even though the ruling in that particular matter could be described as obiter. In conclusion he submitted that he had confidence in me and that that had nothing to do with personal bias. Accordingly prayed that I disqualify myself and the matter be handled by another judge.

Mr. Sekandi on the other hand submitted that the proceedings which the applicant wants to be joined are proceedings that have been overtaken by events and these are proceedings you have to dispose of immediately. He has no proceedings to join. The statutory appeal against the minister of finance represented by the Attorney General were seeking two prayers.

- (i) The declaration that the property had never been sold and that no property interest passed.
- (ii) The property is available for repossession by the Appellant who should be issued with a certificate of repossession.

And that there was an alternative prayer for compensation and prayer for costs. Mr. Sekandi further submitted that last time when they were in the Court the state attorney wanted an adjournment to contact the minister of finance, The Government had conceded to the 2 prayers. It had conceded that the alleged certificate of purchaser of the alleged sale of property was in error and that could entitle this court to grant the relief in the form as prayed in the plaint. The minister of finance has issued a certificate authorising repossession of the second prayer the relief prayed and that since yesterday he received a copy of letters addressed to the solicitor from the Custodian Board confirming what he had stated with those development. There is no pending proceedings in which the applicant could be joined as a party (the said letter was tendered in court it is on court record), that with those developments the Applicant was entitled for judgment without any further proceedings. They could even ask this court to dispose of this appeal on this fact alone. This could not prejudice the applicant in this case to take proceedings against the Attorney General or any claimant. There is no purpose for this application because the applicant is entitled to judgment. The Attorney General has conceded to what they had been asking for.

Mr. Dusabe who appeared for the respondent was in full agreement with the submission of Mr. Sekandi the counsel appearing for the Appellant/plaintiff. They had received instructions from the custodian board that the sale of the property to the applicant Kiwanuka did not follow the regulation. They have already stated that they are willing to return the property to the appellant. So far they issued a certificate of repossession No. 1643 dated 16th September 1993 regarding the property in issue. In that respect the prayers of the appellant have been properly addressed and it appears he is no longer interested in the matter. In the circumstances the Attorney General remains the respondent and therefore the application to be joined as co-respondent by Hannah Kiwanuka should no longer be considered appropriate. There is therefore no necessity to refer the matter to another judge.

In reply Mr. Ssempebwa insisted that I disqualify myself from entertaining the applicant but his learned friends were saying not argued. He continued the substantive appeal is irrelevant it could be withdrawn. The learned counsel maintained his earlier prayer that I disqualify myself from handling the application.

I anxiously considered the submissions of the learned counsels must point out at the outset that I had no interest in the matter. My remarks in the ruling referred to by Mr. Ssempebwa was simply that Mr. Serwanga had no locus standi in the matter, For the sake of clarity the referred to page 5 in my ruling dated 15.9.1993 I had this to say.

“In the instant case it could not be said that Hannah Kiwanuka whom Mr. Serwanga craved to be joined as a party was aggrieved by the decision of the minister of finance when the latter rejected the application for repossession by the appellant. This appeal is against the Minister of finance and the minister of finance is represented by the Attorney General. The learned counsel did not cite any law in support of his assertion. In the premises Hannah Kiwanuka would not be joined as a party the instant appeal. Consequently the learned counsel had no locus standi. His application for adjournment that his client may be joined as a party to the appeal is dismissed with all the contempt in deserves. The application to adjournment of this appeal is rejected and the appeal should be fixed for hearing.”

The above extract of ruling was in my humble consideration meant to Pray the picture that Mr. Kiwanuka had no locus standi in the appeal because no papers had been filed in court and no law was cited in of the verbal application by Mr. Serwanga that was why I ruled that the appeal be fixed for hearing. I deny that I expressed any on the substantive appeal. With regard to the submission by Mr. Sekandi and Mr. Dusabe that the minister has conceded to hand out the property to the proper owner the appellant by issuing a certificate of repossession with due respect that does not disposed of the appeal. The appeal has not been heard or withdrawn. And even then to deny the applicant the opportunity to be heard on his application would be last resort. This court should have exhau.....Unch 1977 HCB 121. Although this case was cited in connection with setting aside the Exparte judgment, I am of the view that it is relevant in the instant case in that the Applicant should be accorded an opportunity to be heard on the application before the court, Also See: Essaj Vs Solanti 1968 EA P where it was held that the administration of justice requires that the substance of all disputes should be investigated and decided on their merits, the errors and lapses should not necessary debar alitigant from the persuit of his rights.

From what has transpired above I am of the firm view that the applicant should be given an opportunity to argue the application and since he did not have confidence in me to pride over the application, I disqualify myself from handling the application since. I am of the view that justice must not only be done but be seen to be done file to be passed over to the P/J/DPR with a view to allocate the same to a new judge.

I. MUKANZA

JUDGE

19.1.1994