

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO. 336 OF 2000
ZAKARIA BUGINGO ::::::::::::::::::::::::::::::PLAINTIFF
VERSUS
ATTORNEY GENERAL ::::::::::::::::::::::::::::::DEFENDANT
BEFORE: THE HON. MR. JUSTICE E.S. LUGAYIZI
JUDGMENT

This judgment is in respect of an appeal that was filed by the appellant under section 14 of the Expropriated Properties Act (Act 9 of 1982). The appeal sought Court's orders as follows,

- (a) a declaration that the suit property belongs to the plaintiff;
- (b) a declaration that pursuant to the sale of the suit property to the plaintiff on 14th August 1998, the Government lawfully divested itself of the ownership of the land and accordingly had no interest legal or equitable to return to Vithaldas Purshotam;
- (c) a declaration that the Certification of Repossession No. 3265 dated 21S December, 1999 in favour of Vithaldas Purshotam in respect of the suit property is null and void;
- (d) an order cancelling a Certificate of Repossession No. 3265 dated 21 December, 1999 issued in favour of Vithaldas Purshotam in respect of the suit property; and
- (e) costs of the suit.

The background to the appeal (which to a large measure also constitutes the facts that were agreed upon by both parties to the appeal) is very briefly as follows. Vithaldas Purshotam is the registered proprietor of the suit property, that is to say, Leasehold Register Volume 448 Folio 5 Plot 37, Kabale Road. The suit property was among those properties that the Government of Uganda expropriated during Amin's era when the Asian community was expelled from Uganda en masse. However, after Amin was ousted from power, the Uganda Government permitted the Asians to return to the country and reclaim their properties. In 1993 Purshotam applied for repossession of the suit property. The Departed Asians' Property Custodian Board referred his application to the controlling authority because his lease for the suit property had expired. Subsequently, the Minister of Finance made a Statutory Instrument (ie. Statutory Instrument No.

17 of 1995) that authorised the sale of the suit property as property No. 2695 under the Schedule to that Instrument. The suit property was then advertised in the New Vision newspaper with a view to selling it by auction. In turn, the appellant submitted the highest bid which Government accepted. On **14th** August 1998 the Government and the appellant concluded a sale agreement. That agreement, among other things, provided that the Government would sell the suit property to the appellant for a sum of shs. 10,650,000/= which the appellant would pay in installments. The appellant proceeded to pay a sum of shs. 8,555,000/ towards the purchase price of the suit property. However, he has not paid the balance because the Government cancelled the sale of the said property to the appellant and then turned round and authorised Purshotam to repossess that property. The Minister of Finance, accordingly, issued Purshotam with Repossession Certificate No. 3265 dated 21s December 1999. The appellant was aggrieved by the said Minister's order and therefore he decided to file the appeal, which is the subject of this judgment.

At the time of hearing the appeal, the appellant was represented by Mr.

Nkurunziza; and the respondent was represented by Mr. Byamugisha — Kamugisha. Both parties to the appeal agreed that the appeal raised two

fundamental questions, namely,

1. Whether the sale of the suit property to the appellant was lawful and valid?
2. Whether the Minister of Finance could validly cancel the said sale?

Court will dispose of the above questions by taking into account the evident on record, the submissions of counsel and the relevant law.

With regard to the first question, Mr. Nkurunziza submitted that the sale of the suit property to the appellant was lawful and valid. He pointed out that the Minister of Finance ordered the said sale, and he had the power, under section 2 of the Expropriated Properties Act of 1982 (Act 9 of 1982), to do so. The property was duly advertised; and the appellant was the highest bidder. Government offered to sell it to him; and he accepted the offer. He paid quite a sizable amount towards its purchase price, and, therefore, he has an equitable interest in it. Presently, the Minister of Finance only holds the said property as a trustee for the appellant who is already in possession of it. Mr. Nkurunziza cited the case of **Shariff Horseman v Herman Mulan2wa Supreme Court Civil Appeal No. 38 of 1995** in support of his submission.

On the other hand, Mr. Byamugisha-Kamugisha submitted that the sale of the suit property to the

appellant was unlawful and invalid. It offended the Expropriated Property Act of 1982 in that the Minister of Finance did not deal with the former owner's application before he authorised the said sale to take place.

The relevant portion of section 8 of the Expropriated Properties Act reads as follows,

“Where,

(a)...

(b)the Minister is not satisfied with the application made under section 3 of this Act, or

(c)...

(d)

the Minister may make an order that the property ... be sold ... in such manner as may be stipulated in the regulations made under the act.”

It is fairly clear from the foregoing that in a situation like the one at hand, the Minister of Finance can only lawfully order a sale of the expropriated property if he has dealt with the former owner's application for repossession and has not been satisfied with its merits. In short, in order for the sale to be lawful, it must have been ordered by the said Minister after he had dealt with and rejected the former owner's application for repossession. The question to pose after juncture, therefore, is this. Did the Minister of Finance order the sale in question after or before he had dealt with the former owner's 1993 application for repossession of the suit property? To answer the above question properly one cannot overlook a letter from the Departed Asians' Property Custodian Board that was addressed to the appellant and is dated 3' March 2000. That letter is part of the record as Exhibit “P7; and it reads as follows,

“Dear Sir,

RE: PLOT NO.37 KABALE ROAD, KISORO - LRV 448 FOLIO 5

your offer to purchase the above-mentioned property has been cancelled, on the ground that the property has been returned to the former Asian owner.

The grounds for the return are as follows: The registered proprietor of the property is Vithaldas Purshotam. On **25th** October 1993 one S.N. Gandesha applied for repossession on behalf of the registered proprietor. He was replied by the Custodian Board, to the effect that the lease had expired and the property had reverted to the controlling authority, and that he should negotiate directly with the controlling authority if he wished to renew the lease. This was under the

erroneous interpretation of the law at that time, that the assets of Ugandan Asians were not subject to the provisions of the Expropriated Properties Act of 1982.

.in April 1999 M/S Byankya Kihika & Co. Advocates, acting on behalf of Vithaldas Purshotam, served the DAPCB and the Attorney General with Statutory Notice of Intention to sue on the ground that their client's repossession claim had not been dealt with in accordance with the law. The Divestiture Committee discussed the claim, and recommended that the former owner be allowed to repossess the property, in view of the fact that they had applied for repossession within the specific time, but has been referred to the controlling authority due to the erroneous interpretation of the law.

The Minister of Finance signed Certificate of Repossession No. 3265 dated 21/12/99, returning the property to ... Purshotam ... It is for this reason that your purchase offer has been cancelled.

We apologise for the inconvenience caused to you...

Yours faithfully,

Ruth Namirembe-olijo (Mrs)

FOR: HEAD, TASK FORCE “

It is obvious that the above letter reveals that the Minister of Finance ordered the sale of the suit property in 1998 before he dealt with the merits of the former owner's 1993 application for repossession of the suit property. Of course, that confusion was brought about by the officers of the Departed Asian's Property

Custodian Board who received that application and purported to deal with it by wrongly referring it to the controlling authority (ie. Kampala City Council) on the ground that the former owner's lease had expired. Later on, when the Minister of Finance ordered the sale of the suit property that order was unlawful and invalid because it offended section 8 (1)(b) of the Expropriated Properties Act of 1982 in that the said Minister had not dealt with the former owner's application for repossession first. For that reason therefore, the sale of the suit property to the appellant was unlawful and invalid. The first question is answered in the negative.

With regard to the second question, Mr. Nkurunziza submitted that the Minister of Finance could not validly cancel the sale of the suit property to the appellant. He had no power to do so under the Expropriated Properties Act of 1982. In any case, the said Minister did not revoke the

Statutory Instrument that authorised that sale (ie. Statutory Instrument No. 17 of 1995). On his part, Mr. Byamugisha-Kamugisha submitted that the Minister of Finance could lawfully cancel the sale of the suit property to correct a mistake that the Departed Asians' Property Custodian Board had earlier on made to the prejudice of the former owner.

After considering the submissions of counsel in respect of the second question, Court has this to say. Since Court concluded under the first question above that the sale of the suit property was unlawful and invalid, it follows that the said sale had no legal effect at all. For that reason, that sale did not bind the Minister of Finance. He had the power to cancel it or to overlook it. At the same time, the said Minister did not have to revoke Statutory Instrument No. 17 of 1995, for item No. 2695 of its Schedule where the invalid sale was authorised, was equally void and of no legal effect.

All in all, the appeal which is the subject of this judgment has not succeeded. It has failed; and it is hereby dismissed with costs.

LUGAYIZI

21/08/2001

Mr. P. Mwaka for Attorney General

Ms. J. Rwakakoko for Appellant

Mr. Senabulya Court Clerk