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10 **1. KABAAL FLORENCE**

VERSUS

BEFORE: HON. MR. JUSTICE BATEMA N.D.A, JUDGE

This is an Appeal from the Judgment and orders of **HIS WORSHIP DANIEL EPOBU KIBOKO**, Chief Magistrate sitting at the Chief Magistrate's Court of Iganga at Iganga.

20 This is a matter that relates to a dispute over ownership of a plot of land situate at Iganga Municipality registered as LRV JJA 114 Folio 1 Plot 108, vis-à-vis the tenancy relationship between the Appellants and Respondent over property on the suit land.

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30 The Appellants claim that following the expulsion of the Asians in 1972, the suit land was managed by the Government of Uganda under the control of Departed Asians Properties Custodian Board (DAPCB). Subsequently, the suit land was allegedly repossessed by Gulamali Pirbhai Somani and Samsudin Jaffer Makhani (lessees) after the Minister of Finance had dealt in the property in 1994 and 1996 respectively. However, no certificate(s) of repossession was tendered in the lower court as an exhibit.

40 The Appellants further claim that after the alleged repossession, the lessees put the management of the suit land under a company called Alderbridge Real Estates and Management Ltd to manage the same on their behalf. That consequently, the leases initially granted to the lessees expired in 2001 and 2002 respectively without any application(s) for renewal of the same. The evidence on record however showed that the new leasehold title was allegedly granted/ extended on 3rd August 2011 under Min. IDLB 41/08/3/2011 with effect from 5th March 2002 for 49 years.

That following the supposed renewal, Alderbridge Real Estates and Management Ltd executed a tenancy agreement with the 1st Appellant, Mrs. Kabaale Florence as a sitting tenant of the DAPCB on 21st November 2003. It is the legality of this agreement and that of the 2nd Appellant that was challenged by the Appellants.

50 The Appellants further contend that on 15th February 2016, a one Mohammed Allibhai a representative of Alderbridge Real Estates and Management Ltd using Powers of Attorney allegedly issued in his favour by the lessees on 28th April 2016 illegally sold and transferred the suit property to the Respondent who obtained a leasehold title on 18th May 2016 under Instrument No. JJA-00009003. The Appellants argued that this constituted an illegality since no good title passed to the Respondent as the same had long expired in 2002.

On the other hand, the Respondent contends that he is the lawful owner and registered proprietor of the suit land having purchased the same from Gulamali



Pirbhai Somani and Samsudin Jaffer Makhani. The Respondent further contends that having lawfully purchased the leasehold title, he took over the rights and benefits of the lessees and became the landlord of the Appellants and as such, they were subject to the terms and conditions of the tenancy.

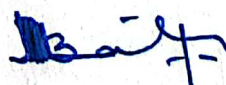
60 To this end, the Respondent as the purported landlord asserts that the 1st and 2nd Appellants are indebted to him to the tune of UGX. 5,400,000/= (Uganda Shillings Five Million Four Hundred Thousand only) and UGX. 4,500,000/= (Uganda Shillings Four Million Five Hundred Thousand only) respectively being rent arrears.

The evidence on record shows that the leasehold title allegedly belonging to the Respondent that had previously been cancelled on 23rd May 2017 under Instrument No. JJA-00012404 was re-instated under Instrument No. JJA00017238. The Respondent argues that this is a confirmation and proof of his conclusive ownership of the leasehold interest.

70 The trial Chief Magistrate entered Judgment in favour of the Respondent and ordered the Appellants to pay the rent arrears and further condemned them to general damages of UGX. 12,000,000/= and costs of the suit. The Appellants being aggrieved and dissatisfied with the decision filed this appeal on the following grounds;-

Grounds of Appeal

1. That the learned trial Chief Magistrate erred in law and fact when he held that the Respondent lawfully acquired the suit property.
2. That the learned trial Chief Magistrate erred in law and fact when he held that the Appellants are indebted to the Respondent in rental arrears.
3. That the learned trial Chief Magistrate erred in law and fact when he failed to subject the entire evidence on record to a thorough evaluation hence reaching an
80 erroneous decision.



Duty of Court

The first appellate court is required to re-evaluate all the evidence that was available to the trial Chief Magistrate and make its own inference on all issues of law and fact. In cases of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. See **National Forestry Authority v. Omuhereza Basaliza William & 4 ors, C.A.C.A No. 15 of 2019.**

Resolution of the grounds of Appeal

- 0 I will straight away address the merits of this appeal without considering the cross appeal since the same was abandoned by the Respondent.

Turning to the grounds of appeal framed for this court's determination, I will adopt the mode used by both counsel i.e to address grounds 1 & 3 together and then ground 2 separately.

Grounds 1 and 3

That the learned trial Magistrate erred in law and fact when he held that the Respondent lawfully acquired the suit property?

That the Learned trial Magistrate erred in law and fact when he failed to subject the entire evidence on record to a thorough evaluation hence reaching an erroneous decision?

The Appellants submitted that the Respondent did not conduct the necessary due diligence to satisfy himself that the lease in respect of the suit land had long expired and the reversionary interest therein had gone back to the controlling authority, Iganga Town Council (as it then was).



110 In buttressing their argument, the Appellants argued, firstly, that no search report was ever generated in respect of this land, secondly, the Powers of Attorney granting powers to PW2, Mohammed Allibhai to sale and transfer the suit land to the Respondent was executed on 28th April 2016 long after the sale agreement was made on 15th February 2016, thus rendering the vendor legally incapable of selling the land, thirdly, that the certificates of repossession were never registered/ entered on the title as required by law thus defrauding government of its revenue.

On the aspect of first option of purchase, the 1st & 2nd Appellants submitted that upon expiration of the lease in 2001 and 2002 respectively, they remained sitting tenants and were entitled to be given the first option to acquire the leasehold from Iganga Town Council.

120 Lastly on the aspect of cancellation and reinstatement of title, the Appellants submitted that once the Commissioner Land Registration cancelled the said title on the basis that the Respondent had failed to present the original certificate of repossession purportedly issued to Gulamali Pirbhai Somani, the same Commissioner had no powers to reinstate the cancelled title, the only remedy of the Respondent was to prefer an appeal.

In opposition to this appeal, the Respondent submitted that he conducted reasonable due diligence and found no incumbrance on the land title to forbid him from purchasing the same. The Respondent further submitted that PW2, Mohamed Alibhai testified that the lessees, Gulamali and Somani were duly issued with certificates of repossession and this same fact was corroborated by DW4, the Executive Secretary of the Departed Asians Property Custodian Board.

130 It was also PW2's testimony that the lessees had applied and renewed the lease on 3rd August 2011 under minute **number IDLB41/08/3/2011** and as such the Respondent acquired good title.



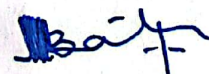
Finally, the Respondent submitted that to the extent that the controlling authority had already considered the application for renewal of the lessees and passed the said minute granting the lease to the repossessors, there was no need to consider the application of the Appellants as sitting tenants.

I have revisited and considered all the evidence on record and my finding is that learned trial Chief Magistrate indeed erred in law and fact in holding that the Respondent lawfully acquired the suit land. The Respondent as the Plaintiff in the lower court failed to prove on a balance of probabilities that he had acquired a valid title over the suit property.

140 According to the testimony of DW4, Bizibu George William, the Executive Secretary of the Departed Asians Property Custodian Board at pages 35 & 36 of the typed record of proceedings which I find to be reliable and believable, to the effect that upon expiration of the lease to the suit land in 2001, Iganga District Land Board extended the said lease without a prior application by the lessees, Gulamali Pirbhai Somani and Samsudin Jaffar Makhani.

In Contrast, the Respondent argues that according to PEX1, the land title and lease agreement dated 10th March 2015, show that Iganga District Land Board approved the grant of the renewal of the lease under minute number; IDLB 41/08/3/2011. I find this argument highly suspicious and flawed for three reasons;

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1. No representative of Iganga District Land Board appeared in court to testify to the authenticity of the minute granting the extension of the lease without an application.
 2. No evidence is on record to prove that there was in fact an application for extension and/ or renewal of the lease from the lessees.
 3. No minutes of the board are exhibited in proof of the resolution for the extension.



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It was further the testimony of the DW 3, Kato Hussein, the Senior Assistant Town Clerk that the only application for a lease he received was that of the 1st Appellant, Nansubuga Kabaale Florence, who as a sitting tenant was well known to DW3 and had been paying the authority's trading licence.

The learned trial Chief Magistrate further failed to subject the entire body of evidence to a thorough evaluation and scrutiny in as far as holding that non registration of the repossession certificates does not invalidate the repossession.

By virtue of **Section 7 of the Expropriated Properties Act** read together with Section 54 of the Registration of Titles Act, the repossession certificate must be registered and entered on the title to enable the Commissioner Land Registration to transfer the same to a buyer/ 3rd party.

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It is my finding that the mere issuance of certificates of repossession in 1994 and 1996 if any did not create an interest in the suit land in favour of the lessees unless the same had been registered.

Therefore to the extent that the former owners did not ensure that their repossession certificates were entered on the register and subsequently registered on the land titles, they cannot claim any interest over the suit land.

I reject the submission by the Respondent's counsel that the due diligence done was reasonable and that the Respondent had acquired good title. Contrary to counsel's submissions, had the Respondent bothered to carry out a search at the registry, he would have found out that the certificates of repossession were never registered on the title.

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There is no trace of the old title formerly owned by Gulamali Pirbhai Somani and Samsudin Jaffer Makhani with a repossession certificate being entered validating the later sale and transfer to the Respondent on 18th May 2016. Instead, there is a



completely new title created out of the blue in March 2015. This Court cannot close its eyes to this illegality.

The Respondent, Hajji Edhiruma Saidi was defrauded by Mohammed Allibhai who had no valid Powers of Attorney at the time of sale from the lessees and whose purported repossession certificates were never entered on the title of the suit land. He is free to recover his money from Mohammed Allibhai. In the premises, Grounds of Appeal No. 1 & 3 are allowed.

190 Before I take leave of this matter, I wish to note that according to Section 91 of the Land Act 1998 as amended, the Commissioner Land Registration has no powers whatsoever to reinstate a cancelled certificate of title. That power lies with the High Court.

Ground 2

That the learned trial Chief Magistrate erred in law and fact when he held that the Appellants are indebted to the Respondent in rental arrears.

Having found that the Respondent is not the lawful owner of the suit land, no rights and benefits accrued to him by virtue of the tenancy arrangement that the lessees had with the Appellants.

200 In any case, there was no valid lease to the suit land upon which a tenancy agreement could be based. I agree with counsel for the Appellants that the tenancy agreement was executed illegally. The Appellants are not in any way indebted to the Respondent. Ground 2 is allowed.

In the final result, this appeal succeeds on all grounds of appeal in favour of the Appellants. This court makes the following orders;

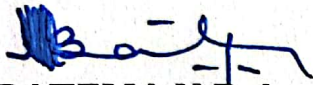
1. The leasehold title comprised in LRV Folio 1 Vol. JJA114 Plot 108 Iganga Municipality issued to Hajji Edhiruma Saidi is hereby cancelled.



2. Iganga District Land Board in liaison with Iganga Municipal Council is hereby directed to process a title for the 1st Appellant, Kabale Florence being the only known applicant for this particular plot.

- 210 3. No orders as to General damages.
4. Costs of the suit are awarded to the Appellants.

I so order



BATEMA N.D.A

JUDGE

16/04/2024