

Saku v Seventh Day Adventist Church Association of Uganda

SUPREME COURT OF UGANDA AT MENGO

WAMBUZI CJ, ODOKI AND PLATT JJSC

Date of Judgment: 1 December 1993

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Appeal from High Court, Byamugisha J

Case Number: 8/93

Citation: [1993] LLR 242 (SCU)

Judgment

WAMBUZI CJ, ODOKI AND PLATT JJSC: The Appellant sued the Respondent in the High Court claiming compensation and general damages against the Respondent for the developments he had made on his plot of land before it was acquired by the Respondent and registered in its name. The Respondent pleaded that the Appellant was a trespasser on the land and was not entitled to any compensation. The trial Judge held that the Appellant had not acquired the land lawfully in accordance with the Land Reform Decree 1975 and dismissed the suit. The Appellant appealed to this Court against that decision. We heard and dismissed the appeal. We reserved our reasons which we now give.

The brief facts of the case are that in 1984 the Appellant bought a plot of land in form of a kibanja at Kanyanya village, Kawempe Division, in Kampala District, from Ezeze Nandaula for US\$ 150 000. The Appellant claimed that he had been introduced to the owner of the land one Tekera according to customary practice. He started constructing residential houses on the plot. In 1987 the land was sold to the Respondent by Ndibalekera, the mailo owner, who was also the Namasole. The Respondent obtained a registered title over one land, and promised to pay the Appellant some compensation for his developments. There was a disagreement over the amount of compensation, the Appellant demanding US\$ 3 966 809 while the Respondent was only prepared to pay US\$ 1.5 million. The Respondent proceeded to fence the land. Thereupon the Appellant filed this suit.

At the trial, three issues were framed, namely:

- “1. Whether the Plaintiff lawfully acquired the land in dispute.
2. Whether the Plaintiff lawfully developed the land.
3. Is the Plaintiff entitled to any compensation”.

On the first issue the Learned Judge held that the Plaintiff did not lawfully acquire the land in dispute because he did not obtain permission of the prescribed authority in accordance with the provisions of section 5(1) of the Land Reform Decree 1975 which provides:

“With effect from the commencement of this Decree, no person may occupy public land by customary tenure except with the permission in writing of the prescribed authority which permission shall not be unreasonably withheld”.

In view of her finding on the first issue, she answered the remaining two issues in the negative.

The Appellant has appealed to this Court on three grounds namely:

- “1. The trial Judge erred in law when she held that the Appellant never acquired land (customary holding) lawfully as there was no permission of the prescribed authority.
2. The trial Judge did not direct herself to that fact that the Respondent who is the registered proprietor of the land, agreed before filing of the suit and during the trial, to compensate the Appellant for his development.

3. The proposed award of US\$ 2 million by the trial Judge had the Plaintiff succeeded, is very inadequate”.

Mr *Kityo*, learned counsel for the Appellant withdrew the third ground of appeal and argued the first two grounds together. The substance of his argument was that the Appellant had lawfully acquired the land for the following reasons. First, section 3(1) of the Land Reform Decree allowed the system of occupying land by Ganda customary practice to continue. Secondly the Appellant had complied with local custom of acquiring land known as *bibanja* by being introduced to the landlady and giving her the customary *Kanzu*, and since she did not object to his occupation, she had accepted him as her tenant. Thirdly, section 5 of the Land Reform Decree did not apply to existing customary tenure, but where there was a fresh acquisition of the tenure.

On the other hand, Mr *Buyondo* for the Respondent submitted that section 3(1) of the Law Reform Decree applied to people who were occupying land before 1975 and section 5 to those who occupied it after 1975 including the Appellant. Secondly, he contended that the Appellant failed to prove that he had complied with customary requirements for acquisition of his plot of land since he failed to produce evidence to show that he was introduced to *Ndibalekera* the landlady. He supported the decision of the Learned Judge that the Appellant had not lawfully obtained the land and was therefore not entitled to any compensation for development on the land.

As the Learned trial Judge observed, the land in question appears to have been originally *mailo* land which was converted by the Land Reform Decree into a leasehold for ninety nine years. Section 1(1) of the Decree declared all land in Uganda to be public land:

- “1(1) With effect from the commencement of this Decree, all land in Uganda shall be public land to be administered by the commission in accordance with the Public Lands Act, 1969, subject to such modifications as may be necessary to bring that Act into conformity with this Decree”.

The various individual ownerships in the form of freehold and *mailo* were converted into leaseholds for ninety nine years as provided in section 2(1) of the Decree:

- “2(1) There shall be no interest in land other than land held by the commission which is greater than a leasehold, and accordingly, all freeholds in land and any absolute ownership, including *mailo* ownership, existing immediately before the commencement of this Decree are hereby converted into leaseholds”.

The Decree saved the system of occupying public land by customary tenure under section 3(1) which provides:

- “The system of occupying public land under customary tenure may continue and no holder of a customary tenure shall be terminated in his holding except under terms and conditions imposed by the commission, including the payment of compensation, and approved by the minister having regard to the zoning scheme, if any, affecting the land so occupied, and accordingly, the Public Lands Act, 1969, shall be so construed as if subsection (2) of section 24 therefore has been deleted therefrom”.

The Decree saved the system of occupying public land by customary tenure under section 3(1) which provides:

- “The system occupying public land under customary tenure on public land since it took place after the commencement of the Land Reform Decree. In order to do so, he had to comply with the provisions of section 5(1) by getting permission “the prescribed authority. Failure to do so renders the agreement between the Plaintiff and *Nandaula* void and of no effects. The Plaintiff did not therefore acquire the land lawfully and first issue will be answered in the negative”.

The first point to consider is whether the Learned trial Judge was correct in holding that the Appellant's acquisition of customary tenure constituted a creation of a new customary tenures on public land. Section 5 of the Land Reform Decree deals with fresh acquisitions of customary tenures as the marginal note indicates. Subsection (1) of that section prohibits the occupation of public land by customary tenure without the permission of the prescribed authority, and section 6 makes it an offence for one to do so. Subsection (2) of section 5 makes it clear that what was intended was the prohibition of any agreement of transfer purporting to create a fresh customary tenure of land.

In the present case, the Appellant bought an existing kibanja or customary tenancy from Nandaula who was occupying land. In the circumstances it cannot be said that the Appellant occupation was creation of a new customary tenure.

It seems to us that the Appellant acquired his customary tenancy by transfer from Nandaula. Section 4(1) of the Land Reform Decree provides:

“A holder of any customary tenure on any public land may, after notice of not less than three months to the prescribed authority or of any lesser period as the said authority may approve, transfer such tenure by sale or gift *inter vivos* or otherwise, subject to the conditions that such transfer shall not vest any title in the land to the transferee except the improvements or developments carried out on the land”.

As we have pointed out above, Nandaula had an existing customary tenure which she transferred to the Appellant upon payment of a consideration. It is our view therefore that the Appellant's acquisition was governed by section 4 and not section 5 of the Land Reform Decree 4.

The second point is whether the acquisition complied with the requirements of the law. Under section 4(1) of the Decree Nandaula had to give notice of not less than three months to the prescribed authority before transferring the land to the Appellant. There was no evidence that she did so. It is not quite clear what that prescribed authority is. Section 16 of the decree does not define prescribed authority but defines the word “prescribed” to mean “prescribed by the regulations made under this Decree”. But the Land Reform regulations 1976 (S1 26 of 1976) do not prescribe such authority. Regulation 1 provides that any person wishing to obtain permission to occupy public land by customary tenure shall apply to the sub county chief in charge of the area where the land is situated. The Applicant is to be registered as a customary occupant of land by the sub county land committee according to regulation 3. It appears to us that these provisions deal with fresh acquisitions of customary tenure not transfers of it.

However, section 16 of the Decree states that the word “commission” means:

- “(a) The Uganda Lands Commission, in relation to grants of leases and payment of compensation for resumption of public land; and
- (b) includes any prescribed authority in relation to sub-leases, temporary occupation licences and customary tenures”.

This seems to be a round about way of defining a prescribed authority but perhaps the intention of the legislature was to say that prescribed authority included the Uganda Lands Commission. It may well be that local chiefs and Land Committees were intended to be included as prescribed authority. In these circumstances it cannot be held that the Appellant acquired the land lawfully. For different reasons, therefore, we upheld the decision of the trial Judge that the Appellant did not lawfully acquire the land and consequently the first ground of appeal failed. The remaining two grounds of appeal do not arise in the circumstances.

Accordingly, the appeal was dismissed with costs.

Before we take leave of this case we would like to express the need for the legislature to clarify who is the prescribed authority in relation to section 4(1) of the Land Reform Decree. It is accordingly directed that the reasons for the Judgment in this appeal be transmitted to the Attorney-General.

For the Appellant:

Kityo

For the Respondent:

Buyondo