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THE REPUBLIC OF UGANDA.
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE.

CIVIL SUIT NO. 33 OF 1992.

MOHAMED NABENDE & 11 OTHERS PLAINTIFFS
VERSUS:
ISLAMIC UNIVERSITY IN UGANDA DEFENDANT.

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU

R U L I N G:

When the suit came up for hearing on 15.12.92, by consent of both Counsel to the parties, an adjournment was sought and granted to 20.1.93 with a view of settling the matter out of court. The defendant undertook to urge the Uganda Government to pay Shs 30m/- 5 in order to compensate the plaintiffs.

It was further agreed that the defendant would undertake to revalue and assess the suit property at its own costs and the valuer of the plaintiffs would also be present during the exercise. The parties would agree on the figure of the revaluation as settlement 10 of the suit property.

By 20.1.93, the defendant had not paid the 30m/- to the plaintiffs. The reason given was that the cheque was not ready from the Government. However, it was in the pipeline but would be in the names of Mbale Municipality to effect payments to the plaintiffs. 15

In another development, the Permanent Secretary Ministry of Lands, Housing and Urban Development in a letter ref: HGC/1/1 dated 21.10.92, promised the defendant's Secretary some money as part compensation to the plaintiffs if the said money was released from the Treasury, and pay the entire compensation in monthly instalments, 20 The promise turned out to be empty by 20.1.93. As a result, the Counsel for the defendant under O.l.r.13 C.P.R., orally applied to join the Attorney General to the suit as the 2nd defendant which application the court granted.

By 11.5.93, the learned Counsel for the defendant abandoned the idea of joining the Attorney General to the suit as previously intimated. No reason was given but instead the Counsel raised an objection on a preliminary point of law under O.7 r (1) (a) and r.12 C.P.R. in that the Plaint be rejected for not disclosing any cause of action. 5

It is the contention of the Counsel that the defendant is not a proper party to the suit. The plaintiffs are customary tenants of the suit land under the Controlling Authority, Mbale Municipal Council. Under section 1 of the Public Lands Act, 1969 and section 1 of Land Reform Decree, 1975, such lands are vested in the Uganda Land Commission. 10

It is submitted that in section 51 of the Public Lands Act, 1969, the land previously vested in Mbale Municipal Council under the Municipality of Mbale Act, was vested in the President but the section now vests the said land to the Uganda Land Commission. 15

Be that as it may, the Uganda Land Commission under section 8 (a) of the Public Lands Act, 1969, is given power to sell, lease or otherwise hold by such lands. Mbale Municipal Council a designated authority assists the Uganda Land Commission, in its functions by virtue of sections 17 and 54 of the Public Lands Act, 1969 respectively. Under section 5 of the repealed Public Lands Ordinance, the Land Commission granted statutory leases to various designated authorities, Mbale Municipal Council inclusive. 20

On the other hand, where the Controlling Authority wants to resume the land, section 1 of the Public Lands Compensation for Resumption Act, 1965 applies. In that regard any person occupying such land does so by licence from the Controlling Authority. Then under section 1 (1) of the said Act, where the Controlling Authority resumes the public land, the person occupying such lands shall be entitled to be paid compensation by the Controlling Authority in accordance with the provisions of the Act. 25

In the instant case, it is the contention that it is Mbale Municipal Council in its capacity as the Controlling Authority which should pay compensation to the plaintiffs, and it is a mandatory obligation on it. Under Land Reform Regulation 1976, Statutory Instrument No. 26/76, rule 9, the duty to pay compensation to any occupier of the public land does not shift to the person or body whom they wish to give the said land. In other words the beneficiary does not compensate the occupier of the said public land but the Controlling Authority.

Consequently, it is submitted that in the instant case, the defendant is a beneficiary by the Controlling Authority and as aforesaid, the defendant in law is not required to compensate the plaintiffs. Wherefore the Plaint be struck out for not disclosing any cause of action against the defendant who is a wrong party. In the alternative and without prejudice to the foregoing for the same reasons, the suit be dismissed with costs.

In reply, the learned Counsel for the plaintiffs submitted that under O.13, r.2 C.P.R., there are both issues of fact and law arising from the suit. At present the question of law only is being considered.

In Annexure "A" a request to survey the suit land was made by the defendant to the Commissioner of Surveys & Mapping, Surveys and Mapping Department. Annexure "B" instructed the Senior Staff Surveyor, Mbale to survey the suit land. Annexure "A" made a lease offer to the defendant to formally accept to become a lessee. In Annexure "C", a valuation report by the Mbale Municipal Engineer in respect of the suit land was made and Annexure "E" demanded the payment from the defendant but all in vain.

It is the argument of the Counsel that under section 23(1) (b) of the Survey Act, Cap. 209, the person for whose benefit the survey is carried out should pay compensation to the plaintiffs. In that regard Annexure "E" clearly points out the willingness to provide the defendant with cash to pay compensation.

Annexure-D,"E" is from the Ministry of Lands, Housing and Urban Development.

Wherefore, it is submitted that the Plaintiff discloses cause of action against the defendant.

In view of the above submissions, the following issues emerge 5
for determination:-

In the first place, on 15.12.92 when the suit came up for hearing, both parties by consent sought an adjournment with a view of settling the matter out of court. This application was granted by court. On 20.1.93 settlement of the matter out of court failed 10
and an oral application under O.1 r.13 C.P.R., was made by the defendant to have the Attorney General joined as a party to the suit. Again this application was granted by the court.

By 11.5.93 the application to have the Attorney General joined as a party was abandoned for reasons best known to the 15
defendant, but not disclosed to the court. However, on the 3rd occasion another application now before court was made by way of an objection on a preliminary point of law under O.7 r.(1) (a) & r.12 C.P.R., to the effect that the Plaintiff does not disclose any cause of action against the defendant and as such should be struck out or 20
be dismissed with costs.

In the light of all that, I wish to point out that any party who pleads any preliminary objection ought to raise it at the earliest opportunity at the trial of the case. This was not the case in the instant suit. Instead the defendant sought an 25
adjournment for settlement of the matter out of court which was granted. When settlement aborted, the defendant again made a second application to have the Attorney General joined as a party to the suit which application though granted but was abandoned without giving reasons to the court or the opposite party. 30


In my humble view, an inference that may be drawn is that the defendant is full of delaying tactics, and if not, has sharp practice.

In the alternative and without prejudice, the defendant is at the cross road, not sure of which road to follow, but preferably looking for a short cut in the circumstances.

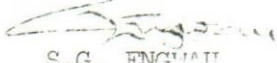
Secondly, in paragraph 5 of the Plaint, it is admitted in the pleading that the plaintiffs are customary tenants of the suit land and Mbale Municipal Council is the Controlling Authority. In that case it is the Controlling Authority who in law as submitted by the defence Counsel are to pay compensation to the plaintiffs. This is a statutory duty on the part of the Controlling Authority which is mandatory. The defendant in the instant case is the beneficiary of the suit land and in that context the statutory duty of compensating the plaintiffs hereof does not shift to the beneficiary of that grant or even the guarantee. In view of that, section 23 (1) (b) Survey Act, Cap. 209 does not apply. Even if the defendant had made a request for the survey of the suit land, that alone would not shift the burden of compensation to it. Consequently, the defendant is a wrong party to the suit to that extent only.

Thirdly, it is pleaded that the defendant in the course of survey and thereafter took occupation of the suit land, destroyed the growing crops and developments thereto which according to the valuation report exceeds 72m/-. In my well considered opinion this is an issue of fact arising in the same suit. Under O.13 r.2 C.P.R, these are issues of fact which are yet to be settled after issues of law which is already disposed of in the proceeding paragraphs above.

In conclusion, the suit may proceed in regard to issues of fact arising therefrom. In the event the suit cannot be struck out or be dismissed and costs shall be in the cause.


S.G. ENG'AU
JUDGE
18.6.93,

25.6.93: Mr. Gwori for the plaintiffs present.
Mr. Musiho for the defendant present.
Ruling delivered in open court.


S.G. ENG'AU
JUDGE