THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL SUIT NO. 19/94

AIDA MBWALI ..... PLAINTIFF

VERSUS

ARUINDBHAI POPAT ..... DEFENDANT

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

J U D G M E N T

The plaintiff in this case is one Aida Mbwali and the defendant is Aruindbhai Popat who was sued in this present suit as a representative of one Ashokumar Khimji Jthwa. by this suit the plaintiff is requesting this court to declare that the property on plot 6 Owen road, Jinja Municipality does not form part of the estate of the late Khimji which the defendant wishes to administer. She is also seeking for another declaration that the property on that plot belongs to the plaintiff and her children, she is further asking the court to declare that the repossession certificate obtained by Ashokumar in respect of this same plot is null and void, she further prays for a permanent injunction restraining the defendant or his agents from evicting her and her children from the same plot, she further claims for costs of the suit.

On the other hand the defendant also put in a counter-claim in which he requests the court to make a declaration that the certificate of title issued to the plaintiff in respect of the same plot was null and void, he further prayed that aneviction order be made for removal of the plaintiff from the plot thus giving vacant possession to the lawful owner of the plot Ashokumar Khimji who is supposed to be the administer of the estate of the late Khimji Jethwabhai Tailor. The defendant also requested this court to award him mesne profits at the market value from 13/5/94 till full payment, he further demanded for costs of this suit.

The background of this case is rather lengthy but it can be summarised in the following style: briefly the facts of the case are that there was once a man living in Jinja by the name of Khimji Jethwabhai Tailor who owned plot 6 Owen road

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Jinja which is the subject of this suit. According to the evidence of the plaintiff she lived with the said Khimji Jethwabhai Tailor on that plot for quite some time as husband and wife and they had 4 children namely: Lauji Khimji alias Bacu Abdu, Kanji Khimji alias Osman Babu, Santaben alias Zula Bebi and Natubhai Khimji alias Zubairi Habibu. (see paragraph 7 of the plaint). In 1972 Tailor being a person of Asian origin was forced to leave Uganda. After he had left Uganda the above plot cintinued to be occupied by the plaintiff and her 4 children until 1973 when soldiers threw her out with her children claiming that the house was that of an Indian and they (plaintiff and her 4 children) had no right to be there, the soldiers occupied the house. The same property was taken over by the Departed Asian Property Custodian Board who managed it until 5/6/1980 when they discovered that it had been wrongfully taken away and they handed it back to the plaintiff. On 23/12/80 the plaintiff had the suit property registered in her name upto now as per annexture "C" to the plaint.

In 1981 however, Khimji Tailor died in London; after his death one of his sons called Ashokumar Khimji now staying in Britain applied for letters of administration which he obtained on 19/4/1994, he therefore became a personal representative of his late father. Having got those letters of administration he appointed the present defendant to manage his property here in Uganda by way of power of attorney. On 13/5/1994 a repossession certificate was issued for repossession of the suit property by Ashokumar, but the certificate was written in the names of his late father Khimji Tailor as the original owner of the property. After having obtained all these documents the present defendant as an agent of Ashokumar proceeded to obtain vacant possession of the suit property from the plaintiff and the plaintiff resisted the approach on the ground that before her late husband left Uganda he had transferred the house to her as his wife and her children, hence this suit.

At the trial seven issues were framed and agreed upon by the parties for determination by this court:-

1. whether or not there was a valid grante by Tailor to the plaintiff in respect of the suit property or premises.

2. whether or not there was a valid marriage between Khimji Tailor and the plaintiff.

3. whether or not the suit property was lawfully vested in the Departed Asians Property Custodian Board.

4. whether or not the suit property forms part of the un-distributed property of the late Tailor.

5. whether or not the repossession certificate of the disputed property is valid.

6. whether or not not the plaintiff is entitled to remdies she is praying for.

7. whether or not the defendant is entitled to remedies he is praying for in the counterclaim.

For the sake of being orderly and for convenience's sake I propose to deal with the seven issues in the order they are indicated above, although the two learned counsel handled them (issues) differently.

Starting with the first issue first, it was the plaintiff's case that the grant of the land to her by her husband was quite valid. The plaintiff herself testified that before her husband left he gave the house to her and her 4 children, she had it transferred to her names, he also gave her a document EX.Pi in which he stated that he had given her the suit premises together with her 4 children. The document was written in swahilli and he had personally signed it in her presence, she tendered that document as EX.P1. The learned counsel for the plaintiff Mr. Tuyiringire in his argument maintained that the house had been lawfully left to the plaintiff, according to him the plaintiff's husband Khimji could not be refered to as a departed asian within the meaning of section 35 of Departed Asians Property Custodian Board Decree (Decree 27/73), because by the time the plaintiff's husband left he had made an arrangement for somebody to cater for his property in Uganda he (Mr. Tuyiringire) relied on the cases of: Lutaya v. Gandesha (1986)HCB 46 and Mustaq Abdula Bhogan v. Attorney General (1988-90)HCB105. In his view the grant was quite valid, he also challenged the evidence of the hand writing expert (DW3) who told the court that the signature on the grant of the property was not similar to that of the plaintiff's husband written on some other documents.

On his part Mr. Beyanga strongly argued that the suit property was not validly left to the plaintiff because the letter of 9/10/1972 by which the late Khimji was alleged to have left the premises to the plaintiff was null and void in view of section 1 of Decree 27/73 which made illegal any transfer made after 6/10/1972. He also relied on the evidence of the handwriting expert Mr. Apolo Mutashwera Ntarirwa (DW3) who said that there were significant differences between the signature on that document and another signature by the late Khimji Tailor on other documents. Mr. Beyanga further explained that the document which transferred the land to the plaintiff referred to somebody called Aida Mbaliye and yet the plaintiff is called Aida Mbwali, according to him that document might have been written with reference to somebody else but not the present plaintiff.

I quite agree with Mr. Tuyiringire's contention that the provisions of the Departed Asians Property Custodian Board Decree (Decree 27/73) did not affect the property left behind by Khimji when he left Uganda in 1972 in particular plot 6 Owen road in Jinja because before he left he had made proper arrangements for that property to be catered for and that arrangements was to have that property handed to part of his family which remained behind. The property was to be managed by his wife who is the plaintiff in this case. The 4 children left behind by Khimji are: Lauji Khimji alias Dacu Abdu, Manji Khimji alias Osman Babu, Santaben alias Zula Bebi and Natubhai Khimji alias Zubairi Habibu, as per paragraph 7 of the plaint. In my view the step taken by the deceased was morally and legally a correct one as he could not leave these people behind without any means of support. The plaintiff explained as to why she could not go with her husband, the reason was that her mother was a Musoga and her own father Mashurudas who was a Hindu had stayed in Uganda for such a long time that he was exempted from the explusion from Uganda. According to her she could not also go because both her mother and father needed her support and they did not allow her to go, it is not however very clear as to why Khimji did not take his 4 children with him. Be that it as it may, it must be emphasised that the provisions of section 1 of Decree no. 27/73 applied only to the Departed Asians Property which was left without any proper arrangement for management of such property in Uganda according to the definition of a

"departed Asian" contained in section 35 of Decree 27 of 1973, this point was clearly stated in the case of: Medateli N. Mulji Bunda and others v. Attorney General HC. Misc. no. 46/87 and in the case of: Mustaq Abdula Bhegan v. Attorney General HCCS 840/87.

Regarding the issue of section 1 of the Departed Asians Property Custodian Board Decree having abolished any transfer made to anybody by the Departed Asians after 6/10/1972 that section could only apply to the property which was subject of that Decree but since this particular property did not fall under that decree it cannot be said to be caught up by the provisions of that Decree or any other subsquent statute dealing with the same point.

It must be pointed out that Khimji did not only give that house to the plaintiff but she herself lived in that house with her family and when the house was taken over by the soldiers in 1973 eventually the Custodian Board returned it to her when it was discovered that this particular property was not supposed to be taken over by the government. This fact clearly shows that she was entitled to have that house and the house was not affected by the provisions of Decree 27 of 1973.

I should state here that the evidence of the handwriting expert cannot be relied upon because he himself admitted that handwritings or signatures vary according to passage of time and the circumstances under which the signature was written or the handwriting took place. It must be remembered that at the time Khimji was signing the document he was being compelled to leave Uganda, he must naturally have been acting under tension which may explain as to why his signature was different from his earlier or later signature. One of the specimen used by the expert to compare Khimji's signature was a Passport issued to Khimji and signed by him in 1974 which was quite sometime after he signed EX.P1. In my view EX.P1 was quite genuine and its contents cannot be doubted. In that document Khimji simply stated that he was leaving his house at plot 6 Owen road in Jinja to his wife and his children, I do not think the plaintiff who is an old illiterate woman aged 60 years would have thought of fabricating that document, at any rate the evidence of the handwriting expert is not binding on this court, it is only one of the factors to be taken into account when considering whether or not the plaintiff has proved his/her case: Onyango v. Republic

learned counsel for the plaintiff, even without the evidence of that document still the plaintiff had adduced enough evidence to show that the property was actually given to her by her late husband, this old lady impressed me as truthful witness; I have no reason to doubt her story that the property was given to her by her husband before he left the country.

On the issue of the name of the plaintiff being written differently in the document, the plaintiff when under cross-examination explained that her husband used to call her Aida only so he was not familiar with the other name of Mbwali; she further explained that Mbaliye is only improper way of pronouncing or writing her correct name of Mbwali. I am satisfied with the plaintiff's explanation as to why the name appearing in EX.P1 is spelt differently from her true name, I hold that the name Aida Mbaliye appearing in EX.P1 refers to the same person who is the plaintiff in this case, Aida Mbwali.

Having said all that I must resolve that there was a valid transfer by Khimji to the plaintiff of the suit premises.

That leads me to the second issue which is whether or not any valid marriage existed between Khimji and the plaintiff. Mr. Tuyiringire the learned counsel for the plaintiff argued that the plaintiff had in fact been married to the late Khimji Tailor according to Hindu custom. He based his argument on the evidence as given by the plaintiff herself (PWI) and her aunt Maliam Abdalazizi (PWII). He asked the court not to be believe the evidence of DW2 Madan Muhan Mohiniraji Dixit who had given evidence to the effect that no valid marriage could have existed between the plaintiff and the late Khimji.

On his part Mr. Beyanga the learned counsel for the defence insisted that no valid marriage ever existed between the plaintiff and the late Khimji. He however, agreed that there might have been a loose relationship between the plaintiff and the late Khimji which did not amount to what is legally known as valid marriage. His contention was based on a number of grounds. The first was that the marriage, if at all it was there, was polygamous and that the Hindu religion did not allow such marriage under section 2(1)(b) of the Hindu Marriage and Divorce Act. The second ground was that the plaintiff got married at the age of 12 years which is not allowed by section 3(e) of the same Act. The third ground which was advanced by

DW2 was that under the Hindu custom when a person changes his religion to another religion, the marriage comes to an end. The fourth ground upon which the defence thought that the marriage was not valid was that it was not conducted in a temple as required by the Hindu religion.

I will deal with these 4 points one by one. Regarding the first point raised by the defence to the effect that the marriage was polygamous, in her evidence PW1 who is the plaintiff in this case testified that it was possible that her husband had another woman but she did not know when he might have married that second wife; in her testimony she further said that the Hindu allowed polygamous marriage and she gave two instances to prove her point, the first instance was the case of Petasham who lived in Kamuli and her own father Mashurudas Mutanda who had two wives each. Section 2(1)(a) of the Hindu marriage and Divorce Act recognises Hindu polygamous marriages within the Hindu marriage so long as such marriages were entered into before this Act came into force. According to the evidence of the plaintiff the marriage between the plaintiff and the deceased is said to have taken place sometime in 1940 and yet this Act became operational on 1/9/1961 so even if the marriage was polygamous it was saved by the provisions of section 2 of the same Act. According to paragraph 8 of the plaint and paragraph 7 of the written statement of defence Khimji married a lady called Sentokbai d/o Devji on 21/4/1941 this was about one year after he had contracted marriage with the plaintiff which means the marriage between him and the second wife would have been treated as void but not an earlier marriage between the plaintiff and the deceased which had been contracted in 1940. As I had stated earlier, both of these marriages could have been saved by the provisions of section 2 of the Act.

In my considered opinion the issue of the marriage having been polygamous is not of any help to the defence in view of the fact that this marriage was entered into before the second marriage and in view of the provisions of section 2 of the Hindu marriage and divorce Act. The provisions of section 9(2)(b) of the Hindu marriage and Divorce Act are not applicable to the present case since those provisions are intended to be applicable to divorce proceedings not to this type of proceedings. Those provisions would have been relevant if the present plaintiff had been seeking for a divorce and sought for the aid of such provisions.

As for the question of age of the plaintiff at the time of marriage, the plaintiff frankly told the court that at the time of marriage she was a young girl, according to her she was born in 1928 and she married in 1940 which means at the time of her marriage she was actually 12 years. Her aunt also confirmed that at the time of her marriage the plaintiff was a young girl whose breasts were just coming out, it is not therefore, in dispute that at the time of marriage the plaintiff was aged 12 years.

According to the provisions of section 3(1)(c) of Hindu marriage and divorce Act a girl intending to be married was required to be 16 years and Mr. Dixit (DW2) was of the view that according to the Hindu custom the girl was supposed to be 19 years but he agreed that at one time the age was 16 years. By provisions of section 3(1)(d) of the Act a girl who has not attained 18 years of age can get married so long as there is a consent of her guardian. In the present case such a consent had been obtained. This view is supported by the evidence of PW2 and the plaintiff herself who testified that this marriage took place in the presence of the plaintiff's father at his own home at Buyonde village, it is my view that even though that consent was not expressly stated by the father of the plaintiff at least it was implied since such marriage could not have taken place at the home of the plaintiff's father if he had not consented to it. In view of the fact that the father of the plaintiff consented to the marriage it follows that the provisions of the law were complied with in this respect and the question of the girl having been married while below the age of 16 does not arise.

On the question of the plaintiff having changed from Hindu to Islam, DW2 pointed out that according to the Hindu custom when a person changes his or her religion from Hindu to some other religion such change brings the marriage to an end. DW2 however, did not hold himself out as an expert in the Hindu religion. The plaintiff in her evidence admitted that she changed to Islam but that was done with consent of her husband who told her to join that religion because he realised that she was not following the preaching in Hindu properly. Since this change was with the consent of the husband I do not see how it would have affected the marriage of the two who continued to stay as husband and wife under the same roof. I am aware of the provisions of section 9 (2)(a) of the Hindu marriage and Divorce Act (cap. 214) which

entitles either of the parties to Hindu marriage to apply for a divorce if one of them changes his/her religion, in the present case neither of the parties utilized this provision of the law so the marriage remained in existence. Change of religion did not automatically end the marriage, it only gave either of the parties a ground to bring the marriage to an end, until one of the parties petitioned the court for divorce the marriage subsisted. Here it has to be remembered that it was the husband who encouraged the plaintiff to become a muslem.

Finally, I have to deal with the issue of the place where the marriage ceremony was conducted. According to the evidence of DW2 this marriage was supposed to take place in a Hindu temple but according to the plaintiff and her aunt the marriage took place in a private home at the house of the plaintiff's father. DW2 later qualified his statement and said that a Hindu marriage can validly be conducted in any place so long as there is a statue of God or a photograph of God in that place where the marriage is being conducted. Judging from that evidence it follows that a Hindu marriage is not restricted to the temple but can be carried out in any other place. This point of the place of marriage raised by the defence cannot be treated seriously and I hold that it is of no help to the defence.

Even if the marriage between Khimji and the plaintiff was not strictly conducted in accordance with the Hindu customs or the provisions of Hindu marriage and Divorce Act still it would not be equitable to treat the position of the two prople who lived together for over 30 years as husband and wife as a mere loose relationship. I strongly feel that even if the marriage might have been lacking in some legal aspects still the plaintiff has to be protected by the provisions of Article 126(2)(e) of the Uganda Constitution, in view of the fact that her stay with Khimji for nearly 32 years was never challenged or questioned by any body until after the death of Khimji.

In all these circumstances and considering the fact that Khimji and the plaintiff lived as husband and wife between 1940 and 1972 when they parted, I am inclined to say that a valid marriage existed between the two people. I reject any suggestion that these people were merely having a loose relationship between them. My answer to the second issue is in the positive,

in that a valid marriage was actually contracted between the plaintiff and the late Khimji Tailor and that marriage subsisted until Khimji Tailor died.

Regarding the third issue, Mr. Tuyiringire the learned counsel for the plaintiff was of the view that the suit property was never lawfully vested in the Custodian Board and that the Custodian Board simply took it over for its own convenience, he confirmed his view by pointing to the fact that the Custodian Board on 5/6/1980 returned the property to the plaintiff. Mr. Beyanga on the other hand argued that the property was properly taken over by the Custodian Board by virtue of section 13 of Decree 27/73 and that the property was accordingly vested in the government under section 4 of the same Decree.

With due respect I do agree with Mr. Tuyiringire's argument that this property was never properly taken over by the Custodian Board because the definition of a departed Asian contained in section 35 of Decree 27/73 did not include Khimji as a departed asian; by definition of that section a departed asian was that asian who left Uganda without making proper arrangement for the management of his property in Uganda. In the present case, as pointed out elsewhere in this judgment, Khimji left his wife behind together with his 4 children and before his departure he arranged for his wife to look after his property (plot 6 Owen road, Jinja Municipality). The provisions of Act 27/73 therefore did not affect plot 6 Owen road Jinja which Khimji himself had given to his wife. The purpose of Decree 27/73 was basically to enable the government and Custodian Board to manage the property which had been abandoned by the Asians who had been forced to leave the country without having made any arrangement for the management of such property, for this same reason I do not believe that the provisions of the Expropriated Properties Act 1982 (Act 9/82)in particular section 1(2)(a) affected the suit property in the present case as that property was never lawfully vested in the government. I have to emphasis here that both Decree 27/73 and Act 9/82 were never intended to deprive an innocent Ugandan like the present plaintiff of his or her property which had been lawfully passed over to him or her; this view is fortified by the fact that the Custodian Board having discovered that it had been mistaken in taking away the plaintiff's property it returned it to her in 1980.

My finding on issue no. 3 is that the suit property was never lawfully vested in the Departed Asians Property Custodian Board since that property has never been a subject of the provisions of Decree 27/73 and Act 9/82. The answer to the third issue is in the negative.

I now turn to the 4th issue, which is whether or not the property in dispute forms part of undistributed assets of the late Tailor. According to the learned counsel for the defence, this property was part of the undistributed estate of the late Tailor. On the other hand Mr. Tuyiringire the learned counsel for the plaintiff insisted that that property was given by the late Tailor to the plaintiff so it did not form part of his estate and the letters of administration granted to Jethwa could not have included this house as Khimji Tailor's undistributed estate. He further argued that even if that property formed part of the estate still the plaintiff as the beneficiary of that estate was entitled to a share in it in view of the provisions of section 28 of the Succession Act as amended by Decree 22/72.

I have already held in issue no. 1 that the house was validly transferred by Khimji to the plaintiff before he left. I have also held in issue no. 3 that the suit property has never been vested in the Departed Asians Property Custodian Board or the government of Uganda either under Decree 27/73 or Act 9 of 1982, because this house was passed over to the plaintiff by the deceased inter vivos so the question of this property forming part of the deceased's estate distributed or undistributed does not arise. The plaintiff being a registered owner of the property is legally protected by the provisions of section 56 of the Registration of Titles Act in the absence of proof of fraud. The answer to issue no. 4 is in the negative.

The 5th issue to be considered is whether or not the repossession certificate of the disputed property issued to the late Khimji on 13/5/1994 is valid. The two counsel did not have much to say on this particular issue. Mr. Tuyiringire who appeared for the plaintiff in this suit contended that since suit premises were never vested in the Custodian Board it should have never been a subject of the repossession. The validity of the repossession, according to him, was challenged when the plaintiff filed this suit and he maintained that the repossession

counsel for defence submitted that the transfer of the property to the plaintiff was null and void and that the certificate of repossession to the defendant issued on 13/5/94 was valid as it was never challenged by the present plaintiff under the provisions of section 14 of Act 9/82 and rule 15 of Statutory Instrument no. 6 of 1983. He also relied on the provisions of section 1(1)(a) and (2)(a) of the same Act 9/82. He further supported his argument with the cases of: Gokaldas Laximidas Tanna v. Rosemary Munyinza (Supreme court appeal no. 12/92) and Registered Trustees of Kampala Institute v. Departed Asian Property Board (Supreme court appeal no. 21/93 unreported).

This issue raises the question of whether or not the provisions of the Expropriated Properties Act 1982 apply to the present case. It is the case for the plaintiff that the Act is not applicable to the present case and the defence is quite adamant that the Act actually is applicable to the present case. It is my considered view that this Act does not apply to the present case for one reason and that reason is that the Act was intended to cover cases of the property which was left behind by the Asians who were expeled from this country and such property had been taken over by the government, but it (the Act) was never intended to take away property from Ugandans when such property was never the subject of Act 27/1973. As it was pointed out in the case of: Registered Trustees Kampala Institute v. Departed Asians Property Custodian Board (supra), the intention of the Act was to enable the government return the property of the Asians to the lawful owners (see judgment of Platt J.S.C. at page 11). The present property was never vested in the government as it was never covered by the provisions of Act 27/73 so it could not be among the property to be returned to any owner. The Custodian Board itself in 1980, long before the Expropriated Properties Act was thought of, discovered its folly of having wrongfully taken over the plaintiff's property and the borad returned it to her. By the time the 1982 Act became operative the property now in issue had been legally handed over to its lawful owner from whom it had been previously taken unlawfully. It will be observed that by the time Khimji left this country he had no legal or equitable interest in plot 6 Owen road as he had transferred his interest to his wife and children therefore to return the property to him under the Expropriated Properties Act was illegal because that amounted to giving him what he himself had given away to the plaintiff

Logically and legally there was no property to be returned to Khimji or his estate, so the so-called certificate of repossession was issued for property which did not exist as far as Khimji's estate was concerned.

The argument that this was an abandoned property cannot be sustained for reasons already given elsewhere in this judgment. The present case must be distinguished from the 2 cases cited to the court by the learned counsel for the defendant in support of his argument that the present case fell under the provisions of Act 9/82. In the first place the 2 cases differ from the present case because of their preculiar historical backgrounds I say preculiar because this is one of the rare cases where a departed Asian had to leave part of his family behind and had to provide for their maintenance which was not the case in this other 2 cases. Another distinction is that whereas the property in the 2 cases was taken over by the government and the property vested in the government, in the present case the property was only temporarily and wrongfully taken from the plaintiff but the same government discovered its wrongful act and returned the property to the plaintiff which was not the case in the other 2 cases relied upon by Mr. Beyanga the learned counsel for defence. It will also be noticed that the two cases quoted by the defence counsel fell under the provisions of Decree 27/73 and Act 9/82 which is not the case in the present case.

The learned counsel for the defence argued quite ably that the plaintiff did not challenge the issue of the certificate of repossession to the defendant as required by provisions of section 14 of the Expropriated Properties Act 1982 and Rule 15 of Statutory Instrument no. 6 of 1983. In answer to this argument Mr. Tuyirngire the learned counsel for the plaintiff pointed out that the plaintiff had in fact attacked or challenged the certificate by filing this suit.

My understanding of the provisions of section 14 of Act 9/82 and Regulation 15 of the Expropriated Properties (Repossession and Disposal) Regulations 1983 is that these provisions do not prohibit any aggrieved part from filing a suit against a decision made against him, at any rate those provisions do permit the ordinary rules of civil procedure to apply to the Act and regulations made thereunder. With do respect I do not agree with Mr. Beyanga when he says that the issue of certificate

challenged the grant of the certificate by filing the present case albeit not in the manner provided for in section 14 of Act 9 of 1982 or Regulations made under it. Filing of the suit was just one of the several ways the plaintiff chose to present her grievance to the court, I see nothing seriously wrong with that choice

In the final analysis I find that the certificate of repossession which was issued to the defendant in respect of the suit property was wrongfully done and it is null and void since the suit property was never affected by either Decree 27/73 or Act 9/82. It must be remembered that as far back as 23/12/1980 the plaintiff had the suit property registered in her names and according to the evidence of DW1 he and the officials who issued the certificate of repossession were aware of this registration of the suit property in the names of the plaintiff before the repossession certificate was issued to him. As pointed out earlier in this judgment, by provisions of section 56 of the Registration of Titles Act the plaintiff is the lawful owner of the suit property in absence of proof of fraud, no fraud on the part of the plaintiff has certainly been proved by defence in the present case.

The position being what it is, I hold that issue no. 5 must be answered in the negative since the certificate of repossession was illegally issued to the defendant. It (certificate) is null and void, it must accordingly be cancelled by the authority responsible for its cancellation.

I feel this is the right moment to deal with the 6th issue as framed in this case. This issue concerns what remedies the plaintiff is entitled to. According to her pleadings the plaintiff requested this court to make the following declarations: that the suit property does not form part of the estate of the late Khimji; that the certificate of rdpossession issued to Ashokumar in respect of the suit premises is null and void. She further prayed for a permanent injunction to be granted restraining the defendant or his agents from evicting her (plaintiff) and her children from the suit property or interferring with their quiet possession of the suit premises. The plaintiff also prayed for the costs of this suit and the counterclaim. In his laconic submission on this issue Mr. Tuyirngire opined that the remedies prayed for by the plaintiff should be

On the other hand Mr. Boyanga objected to the remedies being granted to the plaintiff because the suit premises do not belong to her or her children and that since the plaintiff did not challenge the issue of repossession certificate she cannot be heard demanding for its cancellation; it was his view that if an injunction is granted it would interfere with the administration of the estate of Mr. Tailor; as for costs he maintained that the plaintiff was not entitled to any costs as she ought not have filed this suit.

Considering the finding of this court on the other issues it would be unreasonable and indeed contradictory to hold that the plaintiff is not entitled to remedies prayed for. The issues raised by the learned counsel for the defendant under this issue have been fully covered in my discussion of the previous 5 issues, I need not therefore make any finding on them (issues) here. In view of what has been said earlier in this judgment I feel that this issue no. 6 must be answered in the affirmative i.e the plaintiff is entitled to all the remedies she has prayed for in this case.

Finally I must proceed to deal with issue no. 7 which is whether or not the defendant is entitled to the remedies he is praying for in the counterclaim. In his counterclaim the defendant has been requesting this court for a declaration that the transfer of title in respect of the suit property to the plaintiff was null and void, he also prayed for eviction of the plaintiff from the suit property and for mesne profits at market value from 13/5/94 till payment in full in respect of the suit property. He also claimed for costs of the suit and the counterclaim.

In view of my earlier holdings when dealing with the other 6 issues I am unable to say that the defendant is entitled to any of the remedies contained in his counterclaim. The defendant has been unable to satisfy this court that he has any legal or equitable right or interest in the suit property so as to entitle him to any of the remedies mentioned above. Issue no. 7 is accordingly answered in the negative.

In all these circumstances, I find that the plaintiff has adduced sufficient evidence to warrant judgment being entered in her favour and to warrant the counterclaim being dismissed. Judgment is accordingly entered in favour of the plaintiff with

is dismissed with costs to the plaintiff. It is accordingly hereby declared and ordered as follows:-

1. That the premises on plot 6 Owen road Jinja Municipality does not form part of the estate of the late Khimji Jethwabhai Tailor and his son has no power over that property.

2. That the premises on plot 6 Owen Road Jinja Municipality belongs to the plaintiff and her children.

3. That the repossession certificate obtained by Ashokumar Khimji Jethwa on 13/5/1994 in respect of the suit premises is null and void and must accordingly be cancelled.

4. That the transfer by the Registrar of Titles in respect of the suit premises in favour of the plaintiff on 23/12/1980 is valid.

5. That the defendant, and/or agents or servants are permanently restrained from evicting the plaintiff or any member of her family from the suit property; the defendant and/or his agents or servants are further permanently restrained from interfering with plaintiff's and her children's quiet possession of suit premises in anyway. (i.e A permanent injunction has been granted restraining the defendant or/and his agents or servants from dealing in anyway with plot 6 Owen road, Jinja Municipality).

For voidance of any doubt it is hereby clarified that the defendant in this suit also refers to Ashokumar Khimji Jethwa on whose behalf of Arunindbhai Popat was sued. This judgment therefore is binding on Ashokumar Khimji Jethwa and Aruindbhai Popat or anybody appointed to act or purporting to act on their behalf for whatever purpose in respect of the suit premises. So it is ordered.

C. M. KATO
JUDGE
29/4/96