IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: WAMBUZI, C.J., ODOKI, J.S.C., PLATT, J.S.C.)

CIVIL APPEAL NO.21/93

B E T W E E N

REGISTERED TRUSTEES OF KAMPALA INSTITUTE :::::::::::::::::::: APPELLANT

AND

DEPARTED ASIANS PROPERTY CUSTODIAN BOARD :::::::::::::::::::: RESPONDENT

(Appeal from the judgment and decree of the High Court of Uganda at Kampala (Mr. Justice G.M. Okello) dated 10th May 1993 in Civil Suit NO. 610 of 1992)

JUDGMENT OF WAMBUZI, C.J.

The appellants are the registered trustees of the Kampala Institute which was a members' club originally for the 'Goan' community in Uganda but which later became multi-racial. In 1972 membership of the club was largely Asian and most of the members and trustees left the country as a result of the expulsion of the Asians by the Military Regime of the day.

The club had land in Kampala held on a lease in the name of the appellants on which stood the club house and recreation grounds. After the explusion of the Asians, the government took over the property under the management of the Departed Asians Property Custodian Board, the respondent in this appeal. The club house was used as a mess for Senior

In 1983 the appellants applied for re-possession of the property under the Expropriated Properties Act, 1982 but their application was rejected on the ground that the lease under which the appellants held the property had expired and the property had reverted to Kampala City Council, the controlling authority.

The appellants brought a suit in the High Court against the respondent seeking declaratory orders that,

1. The Expropriated Properties Act, 1982 applied to the property;
2. The appellants were entitled to a certificate of repossession; and
3. A permanent injuction restraining the defendant from interfering with the suit land.

The learned judge in the court below held that the Expropriated Properties Act of 1982 did not apply to the case and that the appellants were not entitled to the reliefs sought. The appellants brought this appeal on 9 grounds.

The first ground is that the learned judge erred in law in finding that the Expropriated Properties Act did not apply to the suit property. This appears to be the main ground and all the other grounds are different aspects of this ground as will appear later in this judgment.

From the pleadings the case in the court below was as follows. Paragraphs 6, 7 and 8 of the plaint stated,

"6. In 1972, the Military Government expelled the Asian community from Uganda en masse forcing most of the Institute's members including members of the board of trustees, to flee the country. The Government of Uganda subsequently took over the plaintiff's property by force, the defendant assuming the management thereof and up to this day, the plaintiff's club house is being used as the prisons officers' mess.

7. On the passing of the Expropriated Properties Act in 1982, the plaintiffs applied to the defendant for the return of their properties on 12th May 1983.

8. After a prolonged verification process that took about nine years, the defendant re-routed the plaintiff's application to the defendant 'New Desk', set up especially for dealing with the properties of Uganda citizens, where the defendant proceeded to summarily reject the plaintiffs' application on the grounds that their lease had expired and the land had reverted to the controlling authority ....."

In its written statement of defence the respondent replied as follows in paragraphs 3 and 6,

"3. Paragraph 2 is admitted only in so far as the defendant is entrusted by law with management of Departed Asians' properties but denies the rest of the allegations contained therein.
.....

6. In answer to paragraphs 9 and 10 of the plaint, the defendant will contend that it only had valid management powers over the suit property before the lease thereon expired and thereafter lost or relinguished management and/or control over this property to the controlling authority concerned and therefore rejecting the application was proper and justified since the defendant had no legal authority or powers to deal with the suit property."

Four issues were framed and in my view the main issue was the second issue framed as follows,

"Whether the suit property was acquired by the Military Regime so as to bring it under the provisions of the Expropriated Properties Act, 1982."

On this issue the learned trial judge held,

"Section 1 (1) (c) of the Expropriated Properties A ct appears to be wide. It appears to cover properties in whatever manner appropriated or taken over by the Military Regime. This provision was considered in Gandesha's case above. The interpretation given of the extent of that section in that case was that it covered only properties which were lawfully acquired by the Military Regime. I agree with that interpretation. For a property to be convered under section 1(1) (c) of the Expropriated Properties Act, it must have been appropriated or taken over by the Military Regime either under section 4 of Decree 27/73 or acquired under Decree 11/75 or by the Custodian Board under section 12(2) of Decree 29/73.

In the instant case, the Act of 4/12/72 when the armed prisons officers took over the suit land could not fall under any of the provisions mentioned above. It was therefore an illegal act. The ownership of the property was not established to be Asian. That illegal act had no legal consequence. The property of the plaintiff was not lawfully acquired and the Expropriated Properties Act 1982 was not applicable to it."

As far as I can gather from the judgment in Gabriel Juma Lutaya Vs Gandesha and Kampala Estates Limited Civil Suit 860 of 1982, the plaintiff Lutaya claimed to be a lawful tenant by allocation of expropriated property who was entitled to quiet enjoyment of the property until the property was returned to the owner or otherwise disposed of under the Expropriated Properties Act, 1982. He claimed various reliefs against the two defendants, an individual and a company.

The learned Chief Justice who tried the case framed three issues as none were framed by the parties. I set down only the first two issues as the third is not material to this appeal. The two were,

> "1. Who owns the shares of the 2nd defendant and therefore plot 2/2B Kampala Road wherein the disputed businesses are situate?
>
> 2. Was the property of the 2nd defendant, more particularly plot 2/2B Kampala Road taken over during the Military Regime? ....."

As regards issue one the learned Chief Justice found that the first defendant, Gandesha, and his wife owned the second defendant, the company, Kampala Estates Limited, which in turn owned the suit property.

As to the second issue the learned Chief Justice gave a brief history of the Decrees passed during the military regime and found as a fact that the property of the first defendant was not vested in the Custodian Board because he was a Ugandan whose property could not have been taken over under the legislation and that the property of his wife could not be taken over either, because it was not proved that she was of Asian origin, extraction or descent. As the two, husband and wife, owned the second defendant, the property of the second defendant was not taken over.

These were the findings necessary for this decision in that case. However, the learned Chief Justice went on to say in his judgment,

> "The third point relates to the interpretation of the phrase 'in any other way

> (NO. 9 of 1982). It was submitted, rather seriously to my surprise, for the plaintiff that the expression means any kind of taking over property during the Military Regime. I would have thought it an elementary point of law that every act authorised by the law pre-supposes the legal and lawful way of doing that thing, so that even if the qualifying adjective 'lawful' or 'legal' is omitted it is to be read in the action proposed. I find no difficulty in holding that in the instant phrase the word 'lawful' or 'legal' must be understood to be implied so that the fuller restatement of the phrase would read: 'in any other lawful or legal way appropriated or taken over by the Military Regime.'
>
> To think otherwise would be in my view tantamount to authorising and unleashing all manner of illegal taking of property. Surely the law cannot authorise what it seeks to prevent."

The learned Chief Justice went on to conclude,

> "It is therefore my view that any one who wishes to bring any kind of appropriation or taking over of property during the Military Regime as falling under section 1 (1) (c) of the Expropriated Properties Act, 1982 must show that the appropriation or the taking over of that property was, in the first place, lawful."

In paragraphs 2, 3, 4, 5, 6 and 7 of the memorandum of appeal in the case before us, the appellant complains in effect that the learned trial judge,

(a) erred in law in finding that the Expropriated Properties Act applied only to the properties previously taken over under the Assets of the Departed Asians Decree;

(b) misconstrued the appellants' counsel's argument on the Expropriated Properties Act;

(c) misdirected himself in law when he found that properties to which the Expropriated Properties Act applied had to be Asian owned;

(d) erred in law by limiting the application of section 1 (1) (c) of the Expropriated Properties Act; and

(e) failed to take into account the purpose and intention of the legislature in enacting the Expropriated Properties Act.

I think there is merit in all these complaints. After dealing with the submission of counsel for the respondent on the interpretation of section 1 of the Expropriated Properties Act in the lower court the learned trial judge commented as follows,

> "He (Mr. Byenkya) argued that section 1(2) of the Expropriated Properties Act, 1982 did not limit the application of the Act so long as the property was taken over by the Military Government in whatever manner. That the incident of 4/12/72 fell squarely within the meaning of section 1(1) (c) of Expropriated Properties Act, 1982 which covers any form of appropriation .....
>
> From the above arguments of both counsel, it is fairly clear to me, that both counsel agreed that properties or business to which Expropriated Properties Act, 1982 applied were those had first been vested in the Government under the Assets of Departed Asians Decree 27/73 and later under the same Decree re-vested in the Custodian Board for management. I share that view."

Clearly the agreement is far from what Mr. Byenkya is recorded as having said and it was, with respect, a misdirection on the part of the learned trial judge on

learned counsel's submission.

Be that as it may section 1 (1) of the Expropriated Properties Act, 1982 provides as follows,

> "1(1) Any property or business which was,
>
> (a) vested in the Government and transferred to the Departed Asians Property Custodian Board under the Assets of the Departed Asians Decree, 1973,
>
> (b) acquired by the Government under the Properties and Business (Acquisition) Decree, 1975,
>
> (c) in any other way appropriated or taken over by the Military Regime save property which had been affected by the provisions of the repealed National Trust Decree, 1971,
>
> shall from the commencement of this Act, remain vested in the Government and be managed by the Ministry of Finance."

On the interpretation of this provision learned counsel for the appellant referred to the long title of the Act which indicates the intention of the Legislature. It reads,

> "An Act to provide for the transfer of properties and businesses acquired or otherwise expropriated during the military regime to the Ministry of Finance, to provide for the return to former owners or disposal of the same by Government and to provide for other matters connected therewith or incidental thereto."

Learned counsel also referred to section 17 of the Act, the definition section, particularly to the following

" 'Former Owner' means and includes, any person who was either the registered owner or proprietor of any real or movable property in Uganda or was a shareholder in a business or enterprise registered in Uganda and who was either expelled or forced to flee from Uganda during the period of the Military Regime or was in any other way dispossessed of such property or business; and anybody who is the legal heir or successor of such person,"

" 'Military Regime' means the Government in power during the period from 25th January, 1971 to 3rd June, 1979."

Learned counsel argued that the intention of the Legislature as indicated in all these provisions was to correct what had gone wrong, that is, the acquisition or taking over of properties or businesses or even dispossession of any person who was either expelled or forced to flee Uganda between January 25th, 1971 and 3rd June, 1979. Learned counsel went on to say that the Act categorises the properties in paragraphs (a) (b) and (c) of section 1(1). He submitted that the appellant's case came within the provisions of paragraph (c) which as worded covers property appropriated or taken over in whatever manner.

In the Gandesha case, which was followed by the learned trial judge, the learned Chief Justice considered in detail the properties which were vested or were acquired under the Assets of Departed Asians Decree, 1973, the Properties and Businesses(Acquisition) Decree, 1975 and other Decrees passed by the military regime. I think that the learned Chief Justice

properly directed himself on the law that the plaintiff in the case before him who claimed that the defendant's property had been taken over and vested in the Custodian Board, a fact which was denied by the defendant, had to show under what law the property had been taken over as alleged. The intention of the relevant legislation in the period indicated, 25th January, 1971 to 3rd June, 1979, was to take over certain property. The taking over had to be legal or lawful or within the law.

On the other hand the Expropriated Properties Act, 1982 was not intended to take over any property but to return property taken over which was described in section 1 of the Expropriated Properties Act, 1982. In my view and with respect the learned Chief Justice in the Gandesha case misdirected himself on the law. The issue before him was not whether the suit property should be returned under the Expropriated Properties Act, 1982 but whether it was appropriated under the legislation passed by the military regime which the learned Chief Justice so carefully analysed. Interpretation of section 1(1) of the Expropriated Properties Act, was, in my view, not necessary to the Gandesha decision and clearly wrong principles were applied.

On the meaning of section 1(1) of the Act the trial judge in the case before us although he followed the Gandesha case, observed,

> "Section 1(1) (c) of the Expropriated Properties Act appears to be wide. It appears to cover properties in whatever

For the respondent it was argued by Mr. Maloba that paragraph (c) of section 1(1) must be construed ejusdem generis paragraph (a) and (b). He submitted that the phrase "in any other way appropriated or taken over by the Military Regime" pre-supposes appropriation or taking over by law as in paragraphs (a) and (b). He further argued that the expression "remains vested in the Government" in the section means that such property must have been vested in the Government in the first place in order to remain vested.

I am not persuaded by any of these arguments. First of all paragraph (a) of section 1 (1) of the Act refers to property vested in the Government and transferred to the Departed Asians Property Custodian Board. It was therefore not vested in the Government immediately before the commencement of the Act. Paragraph (b) of the section refers to property acquired by the Government under the Properties and Businesses(Acquisition) Decree, 1975 which may or may not have been vested in the Government. Paragraph (c) refers to property in any other way appropriated or taken over by the Military Regime which could not have been vested in the Military Regime which was no more but must have been vested somewhere. Under section 1(1) all these properties in (a), (b) and (c), "shall, from the commencement of this Act" wherever they were vested immediately before such commencement "remain vested in the Government and be managed by the Ministry of Finance." I am unable to read into these provisions any suggestion that the properties

Secondly I dor not think the ejusdem generis rule applies in this case. Paragraphs (a), (b) and (c) of section 1(1) are quite distinct and speak for themselves. The wording in paragraph (c) is quite clear and given their gramatical construction, the words, "in any way appropriated or taken over" must mean whether by law as in paragraph (a) or (b) or not and in the context of the various provisions referred to, property the former owners of which may have been merely dispossessed may come under this paragraph. Having regard to the evil intended to be cured by the Legislature which is deprivation of former owners of their properties appropriated or taken over or of which they were dispossessed by the Military Regime, any other interpretation would defeat the purpose of this legislation. In the instant case, the evidence indicates quite clearly that the suit property was forcibly taken over and used to date may still be used by the Government. It is absurd to suggest that because the taking over was illegal, the property in effect cannot be returned and the Government should continue using it.

In my judgment the suit property in the case before us comes within the provisions of section 1(1) (c) of the Expropriated Properties Act, 1982 and it follows that section 1(2) (b) of the Act applies to continue in force the expired lease until the property is dealt with under the Act. I would, therefore, allow the appeal and set aside the judgment and Decree of the High Court and substitute therefor judgment in favour of the appellants

It was not shown that the respondent has the power or legal capacity to grant a re-possession certificate. Accordingly I would decline to give a declaration regarding entitlement to a re-possession certificate which may be against the interests of persons or authorities who are not a party to these proceedings.

I would give the appellants costs here and in the court below.

As both Odoki JSC and Platt JSC agree with the proposed orders, it is so ordered.

Delivered at Mengo, this 1st day of August 1994

S.W.W. WAMBUZI
CHIEF JUSTICE

I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL.

J. KIRYABWIRE
For: THE REGISTRAR SUPREME COURT.

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: WAMBUZI, C.J., ODOKI, J.S.C., & PLATT, J.S.C)

CIVIL APPEAL NO. 21 OF 1993

B E T W E E N

REGISTERED TRUSTEES OF ..... APPELLANT
KAMPALA INSTITUTE

A N D

THE DEPARTED ASIANS ..... RESPONDENT
PROPERTY CUSTODIAN BOARD

(Appeal from the Judgment and Decree of the High Court of Uganda at Kampala (Mr. Justice G.M. Okello) dated 10th May, 1993).

HIGH COURT CIVIL SUIT NO. 610 OF 1992

JUDGMENT OF PLATT, J.S.C.

The real issue on this appel is whether the interpretation given in GABRIEL LUTAYA vs UGANDA, High Court Civil Suit NO. 860 of 1982, by the High Court of Uganda, relating to section 1(1) (c) of The Expropriated Properties Act, 1982 was correct. It is a well-known decision which has stood for many years, and has attracted considerable sympathy. Nevertheless Mr. Byenkya, (learned Counsel for the Appellant) has challenged it. The learned High Court Judge, understandably followed it, and as it was the opinion of Masika C.J., the learned Judge could hardly have done otherwise.

The facts found by the learned Judge, which were all within the narrative of the events giving rise to this suit, are as follows:-

> The Plaintiff, and now Appellant, the Registered Trustees of Kampala Institute, (registered in 1932 under the Trustees Incorporation Act, Cap. 147), held the premises at Plot NO.1 and Plot NO. 38 Buganda Road for members of what was originally the Goean Club, a Non-profit making Club. There were a Tennis Court and Badminton Court on Plot NO.1 and the Club house was on Plot NO. 38. In 1968, the Club opened to all races, and presumably became the Kampala Institute. Nevertheless, most of the members and Trustees of the Club remained Goeans. After the expulsion of Non-citizen Asians from Uganda in 1972, the Prisons Department of the Ministry of Internal Affairs took over the premises by force of arms, and converted the Club House into a mess for the Senior Officers of the Prisons service.

The learned Judge then made the following findings:-

> "Following that take-over by the Government of the day of the suit land the Management thereof was vested in the Defendant Custodian Board".

This probably followed the admission in paragraph 6 of the written statement of defence, namely:-

> "the Defendant will contend that it only had valid management powers over the suit property before the lease thereon expired, ..."

That is an important admission since the Defendant Board called no evidence in its defence. Paragraph 6 then continues:-

> "and thereafter lost or relinguished management and/or control over this property to the controlling authority concerned....."

Consequently, the defence is set up that the Plaintiff's prayers could not be granted, because the Defendant had no power to deal with the suit property after the lease of the property terminated.

The learned Judge had noted that the Plaintiff held the suit property on a lease for 49 years as from 18th July,

It followed that the lease fell in on 17th July, 1981. Hence from December, 1972 to July 1981, the Defendant Board was in control of the property in question. But if the Expropriated Properties Act 1982 applied, the lease would be revived by virtue of section 1 (2) (b) of that Act; and in any event, the Defendant Board has always been in control in fact up to the time of trial.

The learned Judge then ended his narrative by saying that in 1983 the Plaintiff applied to the Defendant under the provisions of the Expropriated Properties Act 1982 for possession of the suit premises. But the defendant objected to this application on the ground that the lease had expired, and the land had reverted to the controlling authority. Accordingly, the Plaintiff brought this suit, and having been unsuccessful, brought this appeal.

The first issue which the learned Judge had set himself to decide, was whether the Expropriated Properties Act 1982, applied to the suit premises? That issue depended to a large extent on issue NO. 2, whether the property in question had been acquired by the Military Regime so as to bring the take-over under the provisions of the Expropriated Properties Act 1982. Depending on the answer to those first two issues, a decision could be made whether the Plaintiff was entitled to repossess the suit premises. In the end, the learned Judge held that the Plaintiff's property had not been lawfully acquired, and thus the Expropriated Properties Act 1982 did not apply. In conclusion he held that the Defendant never had had any legal basis for managing the suit premises. It had been managing the suit premises illegally from the beginning, inspite of its admission in paragraph 6 of the defence.

Hence, the Defendant was entitled to reject the Plaintiff's application for repossession.

The Plaintiff's case on appeal was that the learned Judge was wrong in each one of his conclusions on the law. It may be that ground 1 summed up the case in alleging that the Expropriated Properties Act 1982, did apply to the suit premises. But the remaining grounds explain the Appellant/ Plaintiff's case. The arguments are that it was wrong to find that the Expropriated Properties Act applied only to properties previously taken over under the Assets of Departed Asians Decree NO. 27 of 1973. There had been no argreement by Counsel at the trial that that was the case(grounds 2 and 3). Again it was wrong to hold that the properties expropriated had to be Asian owned, (ground 4). The Judge had been wrong to import the provisions of the Decree NO. 27 of 1973 into the clear words of section 1(1) (c) of the Expropriated Properties Act, or the word "lawfully" into the provisions of that section. That contravened the principles of statutory interpretation, and more-over that interpretation failed to take account of the purpose and intent of the legislature in 1982, (ground 5, 6, and 7). On a proper construction of the section, the Defendant would have authority to manage the suit land, (ground 8). Finally, the Defendant had not been justified in refusing to grant a certificate of repossession(ground 9). The Appellant/ Plaintiff would therefore ask for two declarations; one, that the Act of 1982 applied to the suit premises; and two, that the Appellant is entitled to the suit premises. Mr. Byenkya very properly supported his arguments by authority, for which the Court was grateful.

It will be convenient to set out the provisions of the Expropriated Properties Act 1982 to which I will refer in future as "The Act of 1982".

Revesting of properties in Government,

Decree NO. 27 of 1973

Decree NO. 11.

"1. (1) any property or business which was,

(a) vested in the Government and transferred to the Departed Asians Property Custodian Board under the Assets of Departed Asians Decree 1973,

(b) acquired by the Government under the Properties and Business (acquisition) Decree 1973,

(c) in any other way appropriated or taken over by the Military Regime save property which had been affected by the provisions of the repealed National Trust Decree, 1971,

Shall, from the commencement of this Act, remain vested in the Government and be managed by the Ministry of Finance".

When the learned Judge referred to the "Government of the day", he did so advisedly, because " Military Regime" is defined in section 17 of the Act of 1982 as:-

> "Military Regime" means the Government in power during the period from 25th January, 1971 to 3rd June, 1979".

It is instructive to refer to the preamble of the Act of 1982:- a course of action supported by A.G. vs Prince ERNEST OF HANOVER (1957) A.C. 436: at p. 461), as Mr. Byenkya pointed out:-

> "AN ACT to provide for the transfer of properties and businesses acquired or otherwise expropriated during the Military Regime to the Ministry of Finance, to provide for the return to former owners or disposal of the same by Government and to provide for other matters connected there with or incidental thereto".

Reading that preamble with section 1 of the Act of 1982, it must follow that two types of property were being dealt with. The fist type, included all those properties, and businesses acquired - which must refer to section 1 (1) (a) and (1) (1) (b); and the second, those cases called "otherwise expropriated" - which must refer to sub-section (1) (1) (c) e.g "in any other way appropriated or taken over by the Military Regime....." These properties were all to be returned to their former owners.

The learned Judge explained his interpretation in the following words:-

> "Section 1(1) (c) of the Expropriated Properties Act appears to be wide. It appears to cover properties in whatever manner appropriated or taken over by the Military Regime. This provision was considered in Gandesha's case above. The interpretation given of the extent of that section in that case was that it covered only properties which were lawfully acquired by the Military Regime. I agree with that interpretation. For a property to be covered under section 1 (1) (c) of the Expropriated Properties Act, it must have been appropriated or taken over by the Military Regime either under section 4 of Decree 27/73, or acquired under Decree 11/75 or by the Custodian Board under section 12(2) of Decree 29/73.
>
> In the instant case, the act of 4/12/72 when the Armed Prisons Officers took over the suit land, could not fall under any of the provisions mentioned above. It was therefore an illegal act. The ownership of the property was not established to be [illegible] That illegal Act had no legal consequences. The property of the Plaintiff was not lawfully acquired and the Expropriated Properties Act 1982 was not applicable to it."

That decision followed from LUTAAYA vs GANDESHA, High Court Civil Case No. 860 of 1982 (unreported, except in HCB (1986) 46.), where the learned Chief Justice explained his point of view in the following way:-

> "The third point relates to the interpretation of the phrase "in any other way appropriated or taken over by the Military Regime" occurring in section 1 (1) (c) of the much celebrated

Expropriated Properties Act (Act NO.9 of 1982). It was submitted, rather seriously to my surprise, for the Plaintiff that the expression means any kind of taking over property during the Military Regime. I would have thought it an elementary point of law that every act authorised by the law presupposes the legal and lawfull way of doing that thing so that even if the qualifying adjective "lawful" or "legal" is omitted it is to be read in the action propsed. I find no difficulty in holding that in the instant phrase the word "awful" or "legal" must be understood to be implied so that the fuller restatement of the phrase would read: "in any other lawful or legal was appropriated or taken over by the Military Regime" To think otherwise would be, in my view, tantamount to authorising the unleashing all manner of illegal taking of property. Surely the law cannot authorise what it seeks to prevent.

Suppose, for the sake of argument, an individual or even an official agitated by malice but using government trappings were to dispossess another person of his property and suppose that pursuant to that objective threats or actual violence were to be directed to that individual with such intensity that the owner of the property were forced to flee the country whereupon the malicious originator of the threats or violence were to grab either personally or using some government machinery and property whose owner is not longer around, would such appropriation or taking over be construed as the kind envisaged under S. 1(1)(c) of the Expropriated Property Act, 1982?

Clearly not. For what difference would it make if anirate neighbour were to hire thugs to force his neighbour to flee the country and thereafter use a government machine to take over the property of the owner who is out of the country! Examples are to be endless and in the Military Regime days what sounds fiction today might have been everyday reality. To mymind it matters not that the appropriation was by Government or an individual. What counts is whether the taking was authorised by the law.

The learned Counsel for the Defendants referred to Statutory Instrument NO.69 of 1978 which expropriated Plot Nos.1 and 3 Kimathi Avenue and Plot NO.7 Postal Avenue under the Land Acquisition Act as exaples of the property which is envisaged under S. 1(1)(c) of the Expropriated Properties Act (Act NO. 9 of 1982). I respectfully agree. To this example I may now add such prperties and businesses which were vested in the Abandoned Board but not subsequently

> business I earlier referred to as lying in abeyance. It is possible that there are other examples which do not readily come to my mind.
>
> It is therefore my view that anyone who wishes to bring any kind of appropriation or taking over of property during the Military Regime as falling under S. 1(1)(c) of the Expropriated Properties Act, 1982 must show that the appropriation or the taking over of the property was, in the first place, lawful."

It will now be clear that Mr. Byenkya has very adequately challenged every suspect of the learned Judge's understanding of section 1(1)(c) of the Act of 1982, while Mr. Maloba (representing the Custodian Board) has repeated the arguments of Masika C.J. and submitted others to deal with the status of Trustees.

It may be convenient to start with an examination of section 1(1)(c)'s actual terms. The first canon of Construction must ve that the words should be given their plain meaning. What is the ordinary meaning of:-

> "(c) in any other way appropriated or taken over by the Military Regime.....

Those words would normally mean that the appropration or taking over of property by the Military Regime in (1) (c) would be different from the preceeding approprations or taking-over in (1)(a) and (1) (b).

The ordinary meaning, therefore, of section 1 (1) (c) would be that there was some appropriation in another way other than that of vesting property in the Government and transfer to the Custodian Board under Decree NO.27 of 1973; or acquisition under Decree NO.II of 1975; or as the learned Judge added, section 12(2) of Decree 29 of 1973. What would the position be, if a property had been expropriated and vested in the Custodian Board although the above Decrees did not

The expropriations of the property in section 1(1)(a) and 1(1)(b) can be said to have been carried out under a Decree of the State which represented what is called a "lawful" expropriation at that time. It appears that the interpretation of section 1(1)(c) would offer two possibilities at least; the first, that the other way to acquire property would be via some other legislation other than the Decrees referred to in 1(1)(a) and 1(1)(b); and the second, by some act not having a basis in those Decrees or any other Decree written law.

As far as the argument before this Court went, no other legislation was relied upon. But Masika C.J. gives two examples; first, property acquired under the Land Acquisition Act NO.14 of 1965, and secondly, properties and businesses which were vested in the abandoned Board, but not subsequently revested in the Custodian Board on the repeal of the former Board, and which properties and businesses, Masika C.J. described as lying in obeyance.

As both interpretations are contended for, and possibly both are feasible, are there any indications, in the Act that one or other of these contentions is preferable? Another way of stating the problem is to inquire whether the eiusdem generis rule applies, and if so, to ask what genus has been established? Do sections 1(1)(a) and 1(1)(b) establish a type of expropriation dependant upon a decree or other legislation, or does the preamble to the Act establish that the aim is to return property expropriated by the Military Regime? Masika C.J. could not apparently conceive of appropriations by the Military Regime, except those that were sanctioned by a decree of that Regime. It is difficult to see why-

> ".....Every Act authorised by law presupposes the legal and lawful way of doing that thing so that even if the qualifying adjective "lawful" or "legal" is omitted it is to be read in the action proposed"

If that were so, mistakes made by Government or its officers, could never be cured, by deeming them to have been carried out properly, or deeming them to have been completed by or after a specified time. When an officer has acted without jurisdiction by some mistake, as occurs fairly frequently, it may be that the legislature will vest jurisdiction in him after the event by retrospective legislation. It is against the usual canons of construction to add words which are not there, unless there is a necessity to do so. The well-known words of Lord Bramwell come to mind when he said:-

> "The words of a statute never should in interpretation be added to or substracted from without almost a necessity".

(COWPER-ESSEX vs ACTION L.B. (1889) 14 App. Case. 153 atp.169). As against such an addition, there are several other precepts to be considered.

This is a remidial statute; it is putting right what the legislature in 1982 thought had been unfortunately decreed or done a decade earlier. It was aiming at returning property to the former owners. Such an Act should be given a liberal interpretation. (See DAPUETO vs WYLIE, The Pieve SUPERIORE (1874) C.R. 5P.C 482, CRAIES or STATUTE LAW, 7th Ed. p. 185). This attitude also fits in this case, with the Mischief Rule which may also be called the "Rules in Heydon's Case" which was referred to us. An apt example may be found in the views of Lord Reid in

> "It is always proper to construe an ambiguous word or phrase in the light of the mischief which the provision is obviously designed to prevent and in light of the reasonableness of the consequences which follow from giving it a particular construction".

Applying those principles to the present case the mischief was the expropriation of property, and the remedy was that it should be returned to the previous owners. These exproprations might be sanctioned by decree, or carried out infringing a decree. Having in mind that this Act was to redress the expropriations, would it not be strange to remedy what could be done under a decree, and provide no remedy for an expropriation which infringed a dexree?

Masika C.J. thought the latter course of action would unleash a great number of cases, which ought properly to be the source of litigation between the previous owners and those who unlawfully expropriated the property. But the saving limit there, is that the appropriation must have been the act of the Military Regime. If the Military Regime did not expropriate a particular property, Masika C.J. would be right to extent.

There is one further argument to be dealt with concerning the Land Acquisition Act and the properties in abeyance. Neither Counsel have explained their stand on these matters. It would seem that Mr. Byenkya did not agree that any other legislation was available to fall under section 1(1)(c). I doubt whether the Land Acquisition Act would fall under the terms of the Act of 1982. The decrees under which property was taken away from Asian owners did not involve paying compensation. Where property has been acquired for public use on payment of compensation, it does not seem that any remedy is necessary [illegible]

the Act of 1982. Would the previous owner on receiving his property repay the compensation paid? Nor would it seem that even if there are some further examples of statutory expropriation, that section 1(1)(c) could only be confined to them. Whenever the Military Regime has expropriated property, that should in principle be remedied by the Act of 1982.

Let it be the case, for the sake of arguments, that Mr. Maloba is right from his point of view, that the Decrees of 1973 and 1975 could not have been operated to take over the erstwhile Goan Club, yet it will not avail him of any defence on a broader interpretation of section 1(1)(c). The question that now falls for consideration, is whether on the facts, the Military Regime took over this property?

There can be very little doubt that it did. Armed Senior Prisons Officers invaded the Club, they took it over, and as the Defendant admitted, it was vested in the Board, which had the care and control of the premises. Nothing turned on the word "vesting". That simply meant entered in the Defendant's books. It was used as the Officers Mess, and has been in such use until very recently. It is very difficult to conclude that the Military Regime defined as the Government of the day, did not know of, or did not sanction this action against the Club, which used the premises for so long. To be under the control of the Board, is a clear sign that the Regime had expropriated the property. The Prisons Officers were servants of the Government, and the property was used as Government Property.

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The conclusion that I have reached therefore is that section 1(1)(c) applied to the Club Premises.

The latter was held on a lease which expired in 1981. But by virtue of section 1(2) (b) of the Act of 1982, such lease would have been continued in force, until such property had been dealt with under the Act of 1982. That entirely disposes of the defence, that the Defendant had no further control o er the property, because such control had passed to the Kampala City Council. The Defendant Board was still in control at the hearing of the case.

Turning then to the declarations sought; I would grant the first declaration that section 1(1)(c) applied to the property. I would not wish to fetter the Minister's discretion whether or not to order possession in case other considerations still apply. I would therefore allow the appeal, I would set aside the Judgment and decree of the High Court, and substitute therefore judgment for the Plaintiff for the first declaration sought. I would leave open the second declaration. I would agree with the orders proposed by My Lord the Chief Justice

Delivered at Mengo, this 1st day of August, 1994.

H.G. PLATT, J.S.C

I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL.

J. MURANGIRA
FOR: REGISTRAR SUPREME COURT

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: WAMBUZI C.J., ODOKI, J.S.C. & PLATT, J.S.C.)

CIVIL APPEAL NO 21 OF 1993

B E T W E E N

REGISTERED TRUSTEES OF KAMPALA INSTITUTE.....APPELLANTS

A N D

DEPARTED ASIANS PROPERTY CUSTODIAN BOARD.....RESPONDENT

(Appeal from the judgment of the High Court of Uganda (Okello J) dated 10th May, 1993

in

Civil Suit NO 610 OF 1992)

JUDGMENT OF ODOKI JSC:

I have had the benefit of reading in draft the judgments prepared by Wambuzi CJ, and Platt JSC, and I agree that this appeal must succeed.

There is no doubt that the main issue in this appeal is whether the learned judge was correct in holding that the Expropriated Properties Act 1982 did not apply to the suit property, originally owned by the appellants, and taken over by the military regime and managed by the respondent. The learned judge held that the Act did not apply to the suit property because the appropriation or taking over by the Prisons Department was unlawful and therefore could not come within the provisions of Section 1 (1) (c) of the Act. Section 1 (1) of the Act provides,

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"(1) Any property or business which was,

(a) vested in the Government and transferred to the Departed Asians Property Custodian Board under the Assets of Departed Asians Decree 1973,

(b) acquired by the Government under the Properties and Business (Acquisition) Decree 1975,

(c) in any other way appropriated or taken over by the Military Regime save property which had been affected by the provisions of the repealed National Trust Decree ~~this~~ 1971,

shall, from the commencement of this Act, remain vested in the Government and be managed by the Ministry of Finance"

In coming to his decision the learned judge said,

> "Section 1 (1) (c) of the Expropriated Properties Act appears to be wide. It appears to cover properties in whatever manner appropriated or taken over by the Military Regime. This provision was considered in Gandesha's case above. The interpretation given of the extent of the section in that case was that it covered only properties which were acquired by the Military Regime. I agree with that interpretation. For a property to be covered under Section 1 (1) (c) of the Expropriated Properties Act, it must have been appropriated or taken over by the Military Regime either under section 4 of Decree 27/73, or acquired under Decree 11/75 or by the Custodian Board under Section 12 (2) of the Decree 29/73.
>
> In the instant case, the act of 4/12/72 when the armed prisons officers took over the suit land could not fall under any of the provisions mentioned above. It was therefore an illegal act. The ownership of the property was not established to be Asian. That illegal act had not legal consequences. The property of the plaintiff was not lawfully acquired and the Expropriated Properties Act 1982 was not applicable to it".

It is clear from his judgment that the learned Judge heavily relied on the decision of the High Court in Gabriel William Juma Lutaaya V.M.G. Gandesha & Another, Civil Suit NO.860 of 1982 where Masika C.J. held that anyone who wishes to bring any kind of appropriation or taking over of property during the Military Regime as falling under

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Section 1 (1) (c) of the Expropriated Properties Act 1982 must show that the appropriation or taking over of that property was, in the first place, lawful. This interpretation has far reaching implications and must be seriously reconsidered. The learned Chief Justice reasoned,

> "The third point relates to the interpretation of the phrase "in any other way appropriated or taken over the the Military Regime" occurring in S.1 (1) (c) of the much celebrated Expropriated Properties Act (Act NO. 9 of 1982). It was submitted, rather seriously to my surprise, for the plaintiff that the expression means any kind of taking over property during the Military Regime. I would have thought it an elementary point of law that every act authorised by the law presupposes the legal and lawful way of doing that thing so that even if the qualifying adjective "lawful" or "legal" is omitted it is to be read in the action proposed. I find no difficulty in holding that in the instant phrase the Word "lawful" or legal must be understood to be implied so that the fuller restatement of the phrase would read: "in any other lawful or legal way approperiated or taken over by the Military Regime" To think otherwise would be, in my view tantamount to authorising and unleasing all manner of illegal taking of property. Surely the law cannot authorise what it seeks to prevent"

Mr. Byenkya learned counsel for the appellant submitted that the above interpretation of the phrase "in any other way appropriated or taken over by the Military Regime" was erroneous. He contended that the learned Chief Justice was wrong to read the word "lawful" or "legal" into the Section relying on the authorities of Thomson V. Gould (1910) AC 409 and Vikaers V. Evans (1910) AC 444. He argued that as it can be seen from the preamble (long title) of the Act, the purpose of the statute was remedial and it must therefore be interpreted liberally. He cited Dapueto V. James Willie & Co (1874) L.R. 5 PC 492, Attorney General V. Prince Ernest Augustus of Hannover (1957) AC 436 and Gokaldas Laxmudas Tanna V. Rosemary Muyanja Civil Appeal NO 12/92, in support of his argument.

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Finally counsel submitted, that the mischief rule of interpretation supported his contention.

On the other hand Mr. Muloba, learned counsel for the Respondent, supported the interpretation of Masika C.J. He submitted that paragraph (c) must be read ejusdem generis with paragraphs (a) and (b) with the result that the appropriation or taking over must be made by law. He also contended that the property must have vested in the Military Government before it can remain vested in the Government.

With respect, I think the rule of ejusdem generis was inapplicable in this case. According to this rule, when a series of particular words in a statute is followed by general words, the general words are confined by being read as the same scope of genus as (ejusdem generis with) the particular words. In the present case there were no particular words which were followed by general words either in the sub-section (1) as a whole or in the particular paragraph (c). On the contrary paragraphs (a) (b) and (c) were separate and independent of each other and must be construed on their own in order to give them their full effect.

The learned Chief Justice in effect read into the Section words which the legislature, in its wisdon, had not included in the Act. No authority was quoted to support such interpretation. In Thomson V.Goold & Co, (1910) AC 409, The House of Lords said, at p. 420.,

> "It is a wrong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity it is a wrong thing to do"

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This principle was reiterated in Vickers Sons & Maxim Ltd V Evans (1910) AC 444 where the same court said at P.445,

> "The apppellants contention involves reading words into this clause. The clause does not contain them, and we are not entitled to read words into an Act itself"

The only reason the learned Chief Justice gave was that the legislature could not have intended to authorise illegal taking of property. With respect this reason was misconceived because the purpose of the Act was not to authorise any taking of property but to provide for the return of the property taken over by the Military Regime in whatever manner.

In my opinion the learned Chief Justice did not seriously consider the purpose of the Act, and the mischief that it was intended to remedy. As it can be seen from the long title to the Act, the purpose of the Act was "to provide for the transfer of properties and business acquired or otherwise expropriated during the military regime to the Ministry of Finance (and) to provide for the return to former owners or disposal of the same by Government" In other words the intention was to transfer the properties which had been taken over to the Ministry of Finance for the purpose of returning them to former owners. The mischief which the Act intended to rectify was the expropriation of property by the military regime and the remedy was to return the property to former owners. Former owner is defined under section 17 of the Act to include any person who was a registered proprietor of real property and was either expelled or forced to flee from Uganda during the period of the Military Regime or was in any way dispossessed of such property.

The appellants come under this definition.

The Expropriated Properties Act is therefore a remedial Act. I agree that such a statute must be construed liberally and not restrictively. To do otherwise would be to perpetuate the mischief intended to be redressed and not provide a remedy to the injustice which was occasioned by the Military regime to former owners. It would be wrong and unjust to return property which the military regime took over lawfully and refuse to return property which was illegally taken over. This court cannot approve of an interpretation which would result in such an injustice and which runs contrary to the plain meaning of the words and the purpose of the Act.

In my judgment, Masika C.J. erred in law in holding that for any property to fall under Section 1 (1) (c) of the Act, that property must be lawfully appropriated or taken over. I hold that the words "in any other way appropriated or taken over by the Military Regime" in Section 1 (1) (c) must be given their ordinary meaning and liberation interpretation to mean any appropriation or taking over by the military regime other than as specified in paragraph (a) and (b) of the same sub-section, whether the taking over was lawful or not.

The learned judge in the present case erred in following the erroneous interpretation in the Gandesha Case (Supra), and by so doing he came to a wrong decision. I do agree with Wambuzi CJ, that the interpretation of Masika CJ on Section 1 (1) (c) of the Act was not necessary for his decision in that case, and therefore it was an obiter dictum.

It was common ground that on 14 December, 1972, the Prison Department of the Ministry of Inernal Affairs forcefully took over the suit propery and converted it into

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a Mess for Senior Prisons Officers, and is still occupying it up to the present time. Francis Joseph Almeida (PW1) the former General Secretary of the appellants club, and Joe Falnaldis (PW2) a member of the club who witnessed the take over testified to this effect, on behalf of the appellants. There was no evidence from the respondent to challenge their evidence. On the contrary, in its written statement of defence, the respondent admitted that

> "it had valid management powers over the suit properties before the lease expired and thereafter lost or reliquished management and/or control over this property to the controlling authority concerned and threfore rejecting the application was proper and justified since the Defendant had no legal authority or powers to deal with the suit property"

On the evidence before the trial court, it was established that the suit property was appropriated or taken over by the military regime. Therefore although the lease of the suit property expired in 1981 it was deemed to have continued by virtue of section 1 (2) (b) until such property had been dealt with in accordance with the Act, and the respondent had powers under section 1 (4) to manage such property until the Minister appointed any other body to manage the property or until disposed of.

In conclusion, I hold that the appellants property was appropriated or taken over by the Military Regime and that it falls within the provisions of Section 1 (1) (c) of the Expropriated Properties Act 1982.

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I would therefore allow this appeal and concur in the orders proposed by Wambuzi CJ.

Dated at Mengo this..1st..... day of..April..1994.

B.J. ODOKI

JUSTICE OF THE SUPREME COURT