**Kampala District Land Board and another v National Housing and**

**Construction Corporation**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 25 August 2005

**Case Number:** 2/04

**Before:** Odoki CJ, Oder, Tsekooko, Karokora and Kanyeihamba JJSC

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*[1] Constitutional law – Land – Statutory leases – Effect of abolition of statutory leases – Whether the*

*suit land was registered on the coming into force of 1995 Constitution – Articles 237*(*8*)*, 241 and 285 –*

*Constitution of Uganda.*

*[2] Fraud – Definition of fraud – Whether registration of second appellant was fraudulent – Sections 1,*

*29*(*2*)*, 31*(*1*)*, 38 and 59 – Land Act of 1998 – Sections 64 and 176 – Registration of Titles Act* (*Chapter*

*230*)*.*

*[3] Land law – Bona fide occupation – Registered owner – Definition of a registered owner – Definition*

*of bona fide occupier – Rights of bona fide occupier – Whether respondent was a bona fide occupier –*

*Whether suit land was available for leasing.*

**Editor’s Summary**

The Kampala City Council was the proprietor of two adjacent parcels of land registered as Leasehold Register Volume 1065 Folio 16 Plot number M239 and Plot number M597 Luthuli Second Close in Bugolobi, a suburb of Kampala City. The two plots were part of a statutory lease, LRV 796 Folio 6, granted to the City by the Uganda Land Commission for a term of 190 years. On 1 May 1969, the Kampala City Council granted the respondent a lease over Plot number M239 for a term of 99 years. The respondent then began to construct flats on the parcel of land. During the construction period, it was allowed to utilise plot number M597 (hereinafter referred to as the suit land) to facilitate construction. It proceeded to construct a latrine for workers on the suit land. It subsequently built a fence, enclosing both the flats and the suit land. Between 1970 and 2000, the respondent remained in possession of the suit land, maintaining it for use as a children’s playground as well as a place for drying residents’ clothes. It also passed water pipes underneath the plot. The latrine remained on the plot and was used by the respondent’s workers as well as by local council residents during meetings. In July 1999, the respondent learnt that in June of that year, the suit land had been offered on a lease to the second appellant. Despite protests from the respondent and other area respondents, the first appellant granted the lease to the second appellant who received a title to the suit land. The respondent filed suit in the High Court against the appellants seeking, *inter alia*, a declaration that the suit land belonged to it, and orders that the grant to the second appellant be declared void *ab initio*, that the Registrar of Titles cancel the title issued to the second appellant, that the second appellant be evicted from the parcel, that the first appellant grant the suit land to the respondent as well as payment of punitive and general damages. Both appellants filed written statements of defence denying the respondent’s claims. The High Court dismissed the respondent’s suit. The respondent then appealed to the Court of Appeal which allowed its appeal and granted the declarations and orders sought in the plaint. The appellants now appealed to the Supreme Court on the grounds, *inter alia*, that the Court of Appeal had failed to consider their submissions, that it failed to properly re-evaluate the evidence and that it erred in holding that the respondent was in possession of the plot since 1970. They also argued that the Court of Appeal erred in holding that the plot belonged to the respondent, that the respondent was a bona fide occupant of the plot, that the registration of the second appellant was fraudulent, that the doctrine of estoppel was not applicable against the respondent and in awarding the respondent damages and ordering it to lease the suit land to the respondent. Counsel for the appellants argued, *inter alia*, that the Court of Appeal did not address itself to the question as to whether the respondent occupied the suit land since 1970, and that the respondent was not a bona fide occupant because the suit land was unregistered.

**Held** – The learned Justices of Appeal had adequately re-evaluated the evidence on record before coming to their conclusion. There was ample evidence to support the finding that the respondent had been in possession of the suit land and had effectively utilised it. There were no grounds on which to fault the Court of Appeal’s conclusion that the suit land formed part of the statutory lease granted to the Kampala City Council in 1970 and thus was its registered property on the coming into force of the 1995 Constitution. The evidence on record established that the suit land was not merely surveyed but was also registered. The respondent had been in occupation of the suit land for more than 12 years at the time the 1995 Constitution entered into force, without any challenge from the Kampala City Council. It was therefore entitled to enjoy its occupancy in accordance with Article 237(8) of the Constitution and section 31(1) of the Land Act. It was well settled law that Article 285 of the 1995 Constitution abolished statutory leases to urban authorities. The statutory lease granted to Kampala City Council by the Uganda Land Commission in 1970 was thus extinguished upon the entry into force of the Constitution. However, provisions were made to protect the rights of those tenants in occupation of registered land. District land boards established by the Land Act became successors in title to controlling or urban authorities in respect of public land not granted or alienated to any person pursuant to section 59(8) of the Land Act. In this instance, the suit land had been vested in the Kampala District Land Board which had jurisdiction to allocate it, if not owned by any person or authority. Following the extinguishment of statutory leases, the rights of the respondent as a tenant in possession holding adversely to the Kampala City Council for a long time could not be held to have been automatically extinguished. The respondent could claim the rights and benefits accruing to a bona fide occupant of a registered owner who, in this instance, must be deemed to be the Kampala District Land Board. The Court of Appeal’s holding that the land was not available for leasing without reference to the appellant was consistent with the finding that the respondent was a bona fide occupant of the suit land. A bona fide occupant had security of tenure and his interest could not be alienated except as provided by law. It was well settled law that a certificate of title was indefeasible except on the ground of fraud. Fraud meant actual fraud or some act of dishonesty; *Kampala Bottlers Ltd v Dominico* applied. The procurement of registration of title in order to defeat an unregistered interest amounted to fraud; *Matovu v Ssevivi*, *Nalima v Musoke* and *UPTC v Intaaya* applied. In this instance, the appellants had insisted on registering the suit land in favour of the second appellant in full awareness of the respondent’s unregistered interest and without following the proper procedures for granting leases over unallocated land. The respondent was not given an opportunity to be present during the site inspection nor to submit objections nor to be heard. There was, therefore, ample evidence before the court on which it could reach a conclusion of fraud. The Court of Appeal’s finding of fraud against the appellants could, thus, not be faulted.

1. There were no grounds for disturbing the Court of Appeal’s finding that the doctrine of estoppel did not apply against the respondent.

2. The prayer in the plaint for damages could not be granted as there was no evidence or other grounds for the grant of damages.

3. The respondent’s interest in the land did not entitle it to an automatic grant of a lease over the suit land. The respondent was entitled to apply for a lease and to be given the first option to lease it. The order in paragraph (*g*) should therefore be modified to provide that the appellant give due consideration to the respondent’s application.

Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

Kampala Bottles Ltd v Dominico (U) Ltd [1990-94] EA – **AP**

*Katarikawe v Katweremu and others* (1977) HCB 187

*Marko Matovu and others v Mohammed Ssevivi and another*, civil appeal number 7 of 1978 (CA),

*Registered Trustees of Kampala Institute v Departed Asian Property Custodian Board* civil appeal

number 21 of 1993 (SC)

*Sijaka Nalima v Rebecca Musoke*, civil appeal number 12 of 1985 (SC)

*Uganda Posts and Telecommunications v Lutaaya*, civil appeal number 36 of 1995 (SC)

***United Kingdom***

*Assets Co v Mere Roihi* [1950] AC 176

*Waimiha Saw Milling Co Ltd v Laine Timber Co Ltd* [1926] AC 101