

UGANDA / JUDGMENT

Sentongo v Shell (U) Ltd and Uganda Petroleum Co. Ltd (Civil Appeal No. 108/03) [2003] UGCA 33 (19 May 2003)

[2003] UGCA 33

COURT

Court of Appeal of Uganda

BEFORE

Okello, JA, Byamugisha, JA, Kavuma, JA

CASE / FILE NUMBER

Civil Appeal No. 108/03

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**\$\mathsf{S}\$ CORAM:**

HON. MR JUSTICE G. M. OKELLO, JA HON. LADY JUSTICE C. K. BYAMUGISHA, JA HON. LAD I
JUSTICES. B. K. KAVUMA, JA
HON. MR JUSTICES. B. K. KAVUMA, JA
HON. SUSSICO C. N.
B. K. HUMBER JA

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CIVIL APPEAL NO.108/03**BETWEEN**

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JOHN K. SENTONGO APPELLANT

AND

1. SHELL(U)LTD

2. UGANDA PETROLEUM CO. LTD:.....RESPONDENTS

\$20\$

\$25\$

Appeal from the decision of the High Court of Uganda at Kampala (Katutsi J) dated 19th
<sup>May 2003 in Miscellaneous Application No.779/99 arising from HCCS No.160/99]

JUDGEMENT OF BYAMUGISHA,JA

The appellant herein, lodged the instant appeal against the decision and orders of the High Court dated 19th May 2003 dismissing his application for a temporary injunction.

The background to the dispute between the parties dates back to the 30 year 1993. In that year the appellant filed HCCS No.31/32 against Shell (U)Ltd, the first respondent, seeking to repossess and evict it from the suit premises comprised in Block 14 Plot 276 situated at Kibuye. The first respondent had an equitable lease of 20 years that it had acquired from

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one Tito Bikandaga Kiseka, executor of the estate of the late 35

E. D. M. Kisekka. In May 1992 or thereabouts, Tito Bikandaga Kisekka entered into a sale agreement with the appellant to purchase the suit premises. After the said purchase, the appellant leased the suit premises to Uganda Petroleum Company Ltd, the second respondent for a period of

5 20 years. He was paid over 40 million shillings and rent was paid in advance for the whole period of the lease.

After concluding the lease with the second respondent, the appellant sued the first respondent seeking an eviction order and repossession of the suit

- premises among other reliefs. The second respondent joined the suit as a second plaintiff. The suit was dismissed with costs on 13th December 1993. The plaintiffs lodged an appeal in the Supreme Court against this decision. While the appeal was still pending, the appellant withdrew from the appeal. He sold his Mailo interest to the first respondent for a 10
- consideration of 120 million shillings. He surrendered his interest to the first respondent. 15

The Supreme Court went ahead to hear the second respondent's appeal which it allowed. It remitted the file to the trial court to hear and

determine the second respondent's claim. On 4th February 1998 a consent judgement was entered into between the first and the second respondent. 20

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It was agreed that the second respondent was to transfer the lease title to the first respondent.

The appellant then filed HCCS No. 160/99 against the respondents

- 5 seeking the following declaratory orders that:
- 1 The purported sale agreement between himself and the first respondent in respect of the mailo interest was null and void ab initio

- 2. The second respondent's breach and the appellant's re-entry have terminated the lease the appellant granted to the second respondent
- 10 3. Orders that the first respondent do return the appellant's certificate of title to the suit premises.
- 4. Permanent injunction against the respondents from interfering with the appellant's quiet possession and enjoyment of the suit premises.
- 5. General damages and costs of the suit.
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After filing the suit, the appellant filed an application under Order 37 rules 1.2, and 9 of the Civil Procedure Rules seeking a temporary injunction to restrain the respondents from evicting him or interfering with his possession of the suit premises until the determination of the court. When the application came up for hearing before Katutsi with his possession of the suit premises until the determination of the court. The first respondent moved court on preliminary points of

objection. The first point of objection was that the suit was res judicata

The second was that there was a binding judgement between the parties dated 4th February 1998 which binds all the parties to it regarding the same subject matter.

- The learned judge in his ruling dated 20th June 2002 upheld the objections raised. The only issue that the trial judge found was not covered by the rule of res judicata was the alleged illegal sale of the Mailo interest between the appellant and the first respondent. No appeal was preferred against the ruling.
- 10 The High Court went ahead and heard the application for a temporary injunction. In its ruling of 19th May'03 reaffirmed its ruling of the 20106102 and dismissed the application for a temporary injunction hence this appeal.
- 15 The memorandum of appeal filed on his behalf contains the following grounds:
- 1. The learned trial judge failed to consider evidence of termination of the respondents' leases by the appellant's physical re-entry of Kibuga Block 14 Plot 276 and therefore came to a wrong
- 20 decision/erred in law when he held that the first respondent was entitled to possession by virtue of the judgement and decree in HCCS No.32193.

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- 2. The learned judge failed to judicially evaluate all the evidence placed before him touching on the various breaches of the covenants and conditions in the lease and thereby reaching the wrong decision.
- 5 3. The learned trial judge failed to take into account evidence of the 2nd respondent's breach of the conditions in the lease and thereby came to a wrong decision when he held that the appellant's application for a temporary injunction had the effect of reversing the decision in HCCS No.32193.
- 10 4. The learned trial judge erred in law and practice and procedure by substantially disposing of the main suit in his ruling for the application for a temporary injunction in total disregard of the pleadings and without hearing evidence thereon.

It was the appellant's prayer that:

15 (a) The appeal be allowed.

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- (b) The ruling and order of the High Court dated 19/10/03 be set aside and substituted with an order of a temporary injunction pending the disposal of the main suit
- (c) That the trial of the main suit in the High Court be ordered to proceed
- 20 under a different judge.
- (d) The appellant be awarded costs in this court and the court below.

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When the appeal was placed before us for disposal, Mr Nuwagaba learned counsel for the appellant, argued grounds one and two together and also grounds three and four together. I shall try to handle them in a similar manner. In submitting on the first two grounds learned counsel

- complained that the trial judge did not take time to consider the evidence on record and thereby came to the wrong conclusion. The evidence in question that the learned judge did not consider, according to counsel, is contained in paragraphs 11,12,13 and 14 of the appellant's affidavit sworn in support of the application. The gist of those paragraphs is that the)
- appellant had re-entered the suit premises and terminated the lease of the second respondent. This was done on 3rd September 1998. He argued that the appellant took possession and he is still in possession. It was his contention that the re-entry was not a subject of litigation in the suit filed in 1993 and the trial judge did not consider that fact of re-entry before 10

- dismissing the application for a temporary injunction. He referred us the ruling of this court in Civil Application No.50/03. In this application, court stated that the issue of termination of the lease agreement between the appellant and the second respondent on the ground of the second respondent's breach and abandonment of the suit property had not been to
- adjudicated upon in earlier cases. On the strength of this ruling, counsel concluded, the trial judge ended in his evaluation of the evidence. 10

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In reply, Mr Madrama learned counsel for the first respondent narrated the history of the dispute between the parties. In particular the earlier judgements in the matter that he claimed bound all the parties to those suits including the appellant. He argued that the judgement of 4th

February 1998 bound the appellant as no steps were taken to set it aside or have it reviewed. He supported the trial judge's rejection of the application for a temporary injunction because his ruling of 20106102 bound the appellant, as no appeal was preferred against it. 5

Learned counsel pointed out that this court in its ruling of 16th January'04

10 did not determine the appeal and moreover the application is still pending before this court. He invited us to depart from the ruling because it looked at the plaint of the appellant but did not look at the ruling of 20106102. He contended that in order to determine grounds one and two we should revisit our earlier ruling and disallow the grounds

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I think there is no dispute that there has been rulings, orders and judgements between the parties that bind them. In particular, the ruling of 20106102. In that ruling, the learned trial judge at page 8 stated as follows:

20 The issue of subletting or assigning or parting with possession of the suit property before the court in HCCS 31/93 and HCCS -12/93. It was adjudicated on by a competent court of law. The decree of Luguyiz. In HCCS 31/93 clearly stated that the second defendant had to transfer the suit property, to the first defendant immediately. It went on to state in no uncertain terms that similar terms shall be drawn up and filed by the parties in High Court civil suit No.32 of 1993.

Plaintiff was a party in HCCS 32/93 and is therefore bound by the terms of that judgement. It must be recalled that the consent judgment

was a result of the Supreme Court's order that the High Court $\mathcal{S}$ reconsiders the interests of the second defendant vis a vis the suit premises. In my humble ruling plaintiff is barred from re-opening the issue of subletting assigning or parting with possession of the suit lands and I order accordingly. The sum total of my ruling is therefore:

- the issue of illegality of sale agreement between plaintiff and first 10 \$(i)\$ defendant is not caught by the rule of res-judicata.
- The issue of subletting, assigning or parting with property was \$(ii)\$ adjudicated upon and is barred by re-judicata.
- Each party will bear his/its own costs of the objection". \$(iii)\$

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As I stated earlier, there was no appeal against this ruling. When the parties were before this Court in Civil Application No.50/03 which is an application for a temporary injunction under **Rules 5 and 42** of the Rules of this Court pending the determination of the appeal. Counsel for the

- 20 respondents again raised preliminary objections. He contended that the application was misconceived as the subject matter it seeks to address was disposed of by the High Court in its ruling of \$20/06/02\$. The objections were overruled. This Court was of the considered opinion that the principle of *res judicata* did not apply to the application for a
- temporary injunction. 25

I think that conclusion was reached without proper appraisal of material facts. The Court did not have the ruling of the High Court dated \$20/06/02\$ in which the learned judge had ruled on the principle of *res judicata*. That ruling had left only one issue for determination in the suit i.e the sale of

the suit land by the appellant to the first respondent. Since the appellant did not appeal against that ruling he is bound by it.

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When the trial judge was dismissing the application for a temporary

- 5 injunction he correctly stated the law that guides court in the exercise of its discretion. He found that the appellant in his at'fidavit, in rejoinder, falsely swore that the issue of subletting, assigning or parting with possession was not adjudicated in the ruling made on 20106102. He further observed that the appellant did not appeal against the order giving
- 10 vacant possession to the first respondent, which order still stands. Another issue of interest to the dispute is that the appellant sold his Mailo interest to the first respondent in 1994. This sale in my view must have been in the minds of the respondents when they recorded a consent judgement on 4th February 1998. It is rather strange that the appellant still

- 15 regards himself as a lessor of the property he had sold. The matter is yet to be resolved in court. Prudence would demand that he abide the outcome of the suit he filed instead of taking the law in his own hands.

Considering all the facts and evidence that was before the trial judge, I do not think he erred in his evaluation of that evidence. Consequently the first grounds of appeal ought to fail.

As for the rest of the grounds, these too hinge on the ruling dated 20/06/2002. In dismissing the application for a temporary injunction, the trial judge found and held that the application was seeking to reverse the decision in HCCS 32193 something he found to be untenable.

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However counsel for the appellant submitted that the judge did not consider the breaches of covenants committed by the second respondent and his subsequent re-entry. The appellant having declined to appeal against earlier judgements and the ruling of 20/06/2002 coupled with the

fact that he sold his Mailo interest to the first respondent, he ought to wait the outcome of the suit he filed to have the said sale declared null and void ab initio. I can say without fear of contradiction that at the time material to this appeal, the appellant has no interest in the suit property. The last grounds also ought to fail.

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In the result this appeal would be dismissed with costs to the respondents both here and in the court below.

Dated at Kampala this 15th day of April 2003.

C. a Justice of Appeal

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

HON MR. JUSTICE G. M. OKELLO, JA CORAM: Her Ladyship Justice C. K. BYAMUGISHA, JA HON MR. JUSTICE S. B. K KAVUMA, JA

CIVIL APPEAL NO 108 OF 2003

BETWEEN

JOHN K. SENTONGO:.....

AND

1. SHELL (U) LTD

UGANDA PETROLEUM CO LTD ::::::::::::::::::::RESPONDENTS \$2.\$

{ Appeal from the decision of the High Court of Uganda at Kampala (Katutsi, J), dated 19th May 2003 in Miscellaneous Application No 779 of 1999 arising from HCCS No 160 of 1999.}

JUDGMENT OF G. M OKELLO, JA.

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I have had the benefit of reading in draft the judgment prepared by Byamugisha, JA. I entirely agree with it. I have nothing useful to add.

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As Kavuma, JA also agrees, the appeal shall stand dismissed on the terms proposed by Byamugisha, JA.

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Dated at Kampala this. 25. day of Alove mber 2005.

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G. M. OKELLO JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON. JUSTICE G. M. OKELLO, JA. HON. JUSTICE C. N. B. KITUMBA, JA.
HON. JUSTICE C. K. BYAMUGISHA, JA.

CIVIL APPEAL NO. 108 OF 2003

BETWEEN

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[Appeal from the decision of the High Court of Uganda at] Kampala (Katutsi, J.) dated 19th May 2003 in Miscellaneous Application No. 779/99 arising from HCCS No. 160/99/

JUDGEMENT OF KITUMBA, JA.

I had the benefit of reading the judgement of Byamugisha, JA. I concur.

Dated at Kampala this 2.5...day of Agreed A....2006

N. B. Kitumba JUSTICE OF APPEAL

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