

UGANDA / JUDGMENT

Ssebaggala v Kampala Capital City Authority and Kampala District Land Board (CIVIL SUIT NO. 1033 OF 2018) [2025] UGHC 230 (25 April 2025) [2025] UGHC 230

COURT

High Court of Uganda

BEFORE

Byaruhanga immaculate, j

CASE / FILE NUMBER

CIVIL SUIT NO. 1033 OF 2018

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5 THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****CIVIL SUIT NO. 1033 OF 2018****HAJJI SSEBAGALA MOHAMMED :::::::::::::::::::::::::::::: PLAINTIFF 10****VERSUS****1. KAMPALA CAPITAL CITY AUTHORITY****2. KAMPALA DISTRICT LAND BOARD :::::::::::::::::::::::::::::: DEFENDANTS**

15 *Before: Hon. Lady Justice Immaculate Busingye Byaruhanga*

JUDGMENT

The plaintiff brought this suit against the defendants jointly and severally for several 20 reliefs including a declaration that the plaintiff is the rightful legal owner of property comprised in Leasehold Register Volume 4196 Folio 1, Enterprise road Plot 17A Land at Kampala, Nakawa Division, a declaration that the 1st defendant's works on the suit property is illegal, unlawful and amounted to deprivation of the plaintiff's right in the suit property, an order directing the 1st

defendant to promptly pay 25 adequate compensation in respect of the suit land to the plaintiff valued at a sum of Ug. Shs.1,454,180,000/=, an order for refund of Ug. Shs. 100,000,000 being the loss between the initial purchase price for the assorted building materials and the loss of the returned goods price paid out by the supplier, special damages, exemplary 5 damages of Ug. Shs. 500,000,000, general damages, permanent injunction, interest and costs of the suit.

On the other hand, the defendants denied the plaintiff's claim and individually averred as follows;

- i) The 1st defendant contended that there is an existing gravel road that is 10 6.5 meters wide besides s which there is a drainage channel through Plot 17A Enterprise road on which the plaintiff is a lessee.
- ii) The 1st defendant contended that it carried out boundary opening and topographic mapping of the surrounding features in 2016 and established that Plot 17A seemingly exists on what was designed and 15 planned as a road.
- iii) That the said road alleged to be trespassing on the plaintiff's land comprised in Leasehold Register Volume (LRV) 4196 Folio 1, Enterprise Road Plot 17A, land at Kampala, Nakawa Division serves the public and other existing industrial plots around the area.
- iv) The 1st 20 defendant further averred that there was no encroachment on the plaintiff's land as alleged in the plaint and that the plaintiff is estopped from claiming so having been aware of the existence of the said road alleged to be encroaching on the suit land.

In specific response, the 2nd defendant contended as follows;

- i. That the 2nd 25 defendant is an independent entity that acts within its mandate without any interference or influence from any 3rd party including the 1st defendant.
- ii. That the 2nd defendant does not authorize constructions on properties leased out as alleged.
- iii. That the 2nd 5 defendant has never illegally or unlawfully deprived the plaintiff of the suit land to cause him any loss and that the former has never constructed a road progressing through the middle of the suit land as alleged by the plaintiff.
- 10

Counsel legal representation

The plaintiff was represented by **Kibirige David** while the 1st and 2nd defendants were represented by **Kwikiriza Benson** and **Mwasame Nicholas** respectively.

In the Joint Scheduling Memorandum file on 13th August 2020, the parties and their

- 15 respective counsel agreed upon facts, documents and formulated issues for determination as follows:

- 1. *Whether the plaintiff's suit discloses a cause of action against the 1st and 2nd defendants.*
- 2. *Whether the suit property is an access road.*
- 20 3. *Whether the plaintiff has any interest in the suit property.*
- 4. *Whether the actions of the 1st defendant were justified under the law.*
- 5. *Whether the plaintiff is entitled to the reliefs sought.*

Agreed upon facts included the following:

- 1. The 1st defendant is a Government entity established by the Kampala Capital
- 25 City Authority to administer Kampala Capital City on behalf of the Central Government and it has among others the legal mandate to regulate and control physical planning in the city of Kampala.
- 2. The 2nd defendant's mandate under the law is to lease out land under its control.
- 3. The 2nd 5 defendant granted a lease to the plaintiff on land comprised in LRV 4196 Folio 1 located at Enterprise Road Plot 17A Nakawa Division Kampala.

Witness evidence

The parties also agreed to adduce evidence from several witness. The plaintiff adduced evidence from three witnesses Ssebagala Mohammed (PW1), Dr. Ochwo

10 Ochieng Ojomoko (Pw2), and Yusuf Kimuli (Pw3) while the defendants adduced evidence from three witnesses Asimwe Christine (Dw1), Emmy Waligo (Dw2) and Engineer Justus Akankwasa (Dw3).

Documentary evidence

The parties also relied on documentary evidence which was marked and exhibited. 15 The plaintiffs intend to rely on the following documents;

- *1. Sale agreement dated 10th February 2012 between Senco Financial Services Ltd and Mohammed Ssebagala marked PE1*
- *2. Search Statement dated 5th October 2018 marked PE2*
- *3. Invoices marked PE3 (a-h)*
- 20 *4. OSI International Consultants certificate of value, valuation and survey report, receipt marked PE4(a-c)*
- *5. Notice of Intention to Sue marked PE5*

- *6. Building plans marked PE6*

On the other hand, the defendants exhibited the following documents:

- 25 *1. Topographical maps for 1959 and 1993 series marked DE1*
- *2. Deed Print for Plot 17A Enterprise Road by Commissioner of Surveys and Mapping as at 24th November 2010 marked DE2*
- 5 *3. Certificate of title for Plot 17A Enterprise Road LRV 4196 Folio 1 marked D3*
- *4. Lease Agreement dated 4th March 2011, between Kampala District Land Board and Senco Financial Services Limited marked DExh.4*

10 Locus visit

On 28th February 2024, while in the attendance of Counsel for the plaintiff and the defendants, and the plaintiff, Court visited locus in quo pursuant to **Practice Direction No. 1 of 2007** which stipulates that courts handling land matters should as so far as possible, *interest themselves in physically visiting properties under*

15 *dispute before pronouncing themselves on the proprietary rights of the parties.* This is in line with the provisions of Order 18 rule 14 of the Civil Procedure Rules.

Burden and standard of proof in Civil Cases

Section 101(1) and (2) of the Evidence Act Cap.8 (Revised) Laws of Uganda,

"*Whoever desires any court to give judgment as to any legal right or* 20 *liability dependent on the existence of facts, which he or she asserts must prove that those facts exist."*

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. **Section 102 of the Evidence Act** goes on to provide that;

25 *"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and Section 103 provides that "the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is* 5 *provided by any law that proof of that fact shall lie on any particular person"*

These principles have been reiterated in so many judicial precedents where it has been decided that in civil matters just like the instant case, the burden of proof rests on whoever asserts a fact and the standard of proof is on a balance of probabilities.

10 (See Jovelyn Barugahare versus Attorney General SCCA No. 28 of 1993)

Background of the suit

On 4th March 2011, the 2nd defendant leased out land comprised in LRV 4196 Folio 1 Enterprise road Plot 17A land at Kampala (herein after referred to as the suit land) to Senco Financial Services Limited for a term 5 years (DE4). Subsequently, on 10th

- 15 February 2012, M/s Senco Financial Services Limited executed a sale of land agreement with the plaintiff Mohammed Ssebagala for the purchase of land comprised in LRV 4196 Folio 1 Enterprise road Plot 17A land at Kampala (herein PE1). Subsequently, the suit land was registered in the plaintiff's names on 4th April 2014 at 9:10am under instrument number 486936 (PE2 and DE3). The plaintiff 20 commenced purchase of building materials to develop the suit land (PE3 (a)-(h)).
- However, shortly, thereafter the 1st defendant constructed a road passing through the suit land.

Preliminary point of law

Counsel for the 1st defendant submitted that the plaintiff's suit arises from an 25 illegality which cannot be condoned by this court. Counsel argued that it was Dw1's testimony that the suit land squarely sits on Kakoma Road, which is equally confirmed by DE1 being a topographic map of 1993 of the area as well as the deed plan of 2007. Counsel went ahead to submit that prior to titling of land and before deed plans are issued by the Surveys and Mapping Department of the Ministry of

- 5 Lands, planning comments must be sought from the Physical Planning Committee of the area and had the same been done by the plaintiff or his predecessor in title, it would have been established that the suit land formed part of Kakoma Road which already existed.
- To further concertize his argument, counsel for the 1st defendant cited several 10 authorities like **Makula International Ltd versus His Eminence Cardinal Emmanuel Nsubuga and Rev. Fr. Dr. Kyeyune CACA No. 4 of 1981** and **Masaka Municipal Council versus Takaya CACA No. 173 of 2015**.

In rejoinder, counsel for the plaintiff submitted that this preliminary objection was only raised during in the 1st defendant's submission yet it requires evidential proof 15 for both parties as to whether the suit land formed part of Kakoma Road. Furthermore, counsel for the plaintiff argued that during cross examination, Dw1 conceded that the plaintiff's deed plans did not show any road passing through the suit land.

- Counsel further argued that DW2, the Acting Secretary of the 2nd 20 defendant affirmed in his evidence in chief that the 1st defendant's predecessor Kampala City Council as well as the 2nd defendant approved the architectural and structural plans on the suit land and as such the suit land could not possibly form part of an existing access road.
- 25 *Resolution*

The 1st defendant contends that the plaintiff's suit is premised on an illegality on account of the fact that the suit land squarely sits on a portion of Kakoma Road which existed prior to the plaintiff's purchase of the suit land, hence the said purchase and the plaintiff's claim to the suit land is illegal. I have observed that the

1st 30 defendant's point of law shall be well addressed when resolving the issues raised

5 particularly in issue no.3, therefore, I shall proceed to do the same and in due time, this point of law shall be handled.

Issue 1:

Whether the plaintiff's suit discloses a cause of action against the 1st and 2nd defendants?

- 10 It is counsel for the plaintiff's submission that the plaintiff's plaint discloses a cause of action against the defendants and therefore satisfies the principles set out in the famous case of **Auto garage & Anor versus Motokov [1971] E. A. page 514**. Counsel further submitted that the plaintiff is the registered proprietor of the suit land having purchased the same from Senko Financial Services hence the former
- enjoyed the right to own property which was violated by the defendant when the 2nd 15 defendant, a watch dog of the 1st defendant when the 2nd defendant constructed an access road through the suit land.

On the other hand, counsel for the 1st defendant refuted the fact that the plaintiff is the rightful legal owner of the suit property which is comprised in LRV 4196 Folio

- 1 Enterprise Road Plot 17A at Kampala- Nakawa Division. It is the 1st 20 defendant's case that there was no encroachment or works whatsoever on the suit property and that the plaintiff is estopped from claiming so having been aware of the existing gravel road that hasn't been upgraded and that no civil work has been done yet on the ground.
- Counsel for the 1st defendant further submitted that the 1st 25 defendant is mandated as a statutory body under Section 7 (1) g and k of the Kampala Capital City Act of 2011 to construct and maintain major drains and to carry out physical planning and development control within the city hence no cause of action can be sustained against it for merely executing its lawful obligations.

5 Counsel further argued that land is acquired subject to the prior existing equitable interests. Counsel stated that a public right of way has existed over the suit land for a long period of time even prior to the plaintiff's acquisition of the suit land. Counsel relied on several authorities, among them **Uganda Post and Telecommunications versus A. K. P. M Lutaaya S. C. C. A No. 36 of 1995**, **Herbert Musoke Ssalongo 10 versus Makindye Ssabagabo Municipal Council H. C. C. S No. 458 of 2018**.

Analysis

Order 7 rule 1 (e) and rule 11 (a) of the Civil Procedure Rules stipulate that a plaintiff must contain the facts constituting the cause of action and when it arose and a plaintiff is rejected by court where it does not disclose a cause of action. The term "cause of action" was defined in the case of **Auto Garage versus Motokov (1971) EA 514** and in the latter case of **Tororo Cement Co. Ltd versus Frokina International Ltd SCCA No. 2 of 2001**, wherein Justice Oder (JSC) while relying on the Auto Garage case stated as follows;

"A cause of action means every fact held that which is material to be* 20 *proved to enable the plaintiff to succeed or every fact which, if denied, the plaintiff must prove in order to obtain judgment".* The Hon. Justice went ahead to say that *... "what is important in considering whether a cause of action is revealed by the pleadings are the questions whether a right exists and whether it has been violated".*

25 The Honorable Justice further stated that;

*The guidelines were stated by the Court of Appeal for East Africa in **Auto Garage versus Motokov no.3 (1971) EA 514**. They are;*

- *a. The plaintiff must show that the plaintiff enjoyed a right.*
- *b. That right has been violated; and*

5 *c. That the defendant is liable.*

It is now established that when determining cause of action, the court shall only peruse the plaintiff and the attachments thereto as was held by Wambuzi (CJ Emeritus) in the in the matter of **Ismail Serugo versus KCC & Anor, Constitutional Appeal No. 2 of 1998**, at page 3.

- 10 Having perused the plaintiff and attachments thereto, I have observed that the plaintiff is the registered proprietor of the suit land as per exhibit DE3 and as contended in paragraph 4 (b) of the plaintiff, a fact that is not challenged by the defence. As against the 1st defendant, the plaintiff contends in paragraph 4 (e) of the plaintiff that the former unlawfully entered the plaintiff's land and constructed a road progressing through
- the middle of the suit land. It should be noted that it the 1st 15 defendant's counsel who tendered in evidence the certificate of title of the suit land which was admitted and exhibited as DE3.

Regarding the 2nd defendant, the plaintiff contends in paragraph 2 (f) that as the lessor of the suit land, the former cleared the 1st defendant to construct the said access

- 20 road on the suit land well knowing that the suit land had been leased to the plaintiff. Considering just the plaint, the attachments thereto and exhibit DE3, I am convinced that the plaintiff being the registered proprietor of the suit land, enjoys a claim of right over the suit land and the same was presented above was allegedly violated by the defendants. However, whether these claims can successfully be sustained as
- 25 against the defendants is an issue left for determination in the succeeding issues. In the premises, this issue is resolved in the affirmative.

Issue No: 2:

Whether the suit property is an access road?

- 5 Counsel for the plaintiff first made reference to the Roads Act No. 16 of 2019 where an access road means a public or private road affording access to a public road or to a highway. Counsel for the plaintiff further submitted that according to the plaintiff's title deed and the evidence of the plaintiff witnesses never alluded to any existence of an access road on the suit land. Counsel for the plaintiff further alluded to the fact 10 that, according to paragraph 5 and 7 of the plaintiff's witness statement, the plaintiff embarked on the construction of an office and ware house on the suit land premised on architectural and structural plans which had been approved on 28th April 2011 by
- the 1st defendant's predecessor Kampala City Council. It was counsel for the plaintiff's argument that the suit land is not an access road since the said structural 15 plans could not have been approved had there existed an access road prior.

On the other hand, it was counsel for the 1st defendant's submission that based on the topographic map of 1993 and the 2007 deed plan of the suit land as well as the google series maps of 2004 to 2022, the suit land was a gazetted access road used to access Plot 17A prior to the plaintiff's acquisition of the suit land. Counsel for the 1st 20 defendant further submitted that during the locus visit Dw1 expounded on the Topographic maps submitted earlier in evidence and informed court that the Topographic of 1993 showed that the current plot 17A was an access road and was curved out of Kakoma Road where it intersects with Enterprise Road and that a road is a continuous circulation and feeds into other roads unlike a close which terminates at a particular plot. According to counsel for the 1st 25 defendant, the title for plot 17A Enterprise Road was issued without seeking consent from the Physical Planning Committee of KCCA and that is why the deed plans of 2010 in respect of the suit land were issued in error since the deed plans were issued in respect of land which was an access road. Counsel made reference to the deed plans of 2007 in respect of 30 the suit land as per exhibit DE1 which shows that as of 2007 the suit land was an

Page 11 of 23

- 5 access road connecting Kakoma Road to Enterprise Road and plot 17A on the said interconnection was nonexistent in 2007. Counsel for the 1st defendant further made reference to the evidence of Dw3 who made it clear that an access road existed prior to the plaintiff's acquisition of any interest in the suit land. According to counsel, the google time series images undoubtedly show that the road known as Kakoma
- 10 Road existed prior to the plaintiff and his predecessor's acquisition of the title and plot 17A was unscrupulously created over an existing road as an attempt to sanitize an illegality.

Counsel relied on the case of **Gawaya Tegule veruss Kampala City Council Authority H. C. C. S No. 214 of 2011**, where Hon. Justice Ssekaana Musa dismissed

- 15 a suit against KCCA and subsequently found that there existed an access road through the plaintiff's land. The Honourable Judge also found that the failure to indicate or mark the access road on the plaintiff's certificate title did not mean that there is no lawful access through the plaintiff's land. In conclusion, counsel for the 1st defendant submitted that the suit land qualifies as an access road.
- 20 *Analysis*

Section 3 of the Roads Act defines 'access road' to mean a public or private road affording access to a public road or to a highway. **Section 61 (2)** of the same Act specifically prohibits the construction or use of an access road without any written approval from the road authority.

25 In his evidence, the plaintiff (Pw1) told court that prior to his purchase of the suit land from Senco Financial Services in 2012 (see **PE1**), there never existed an access road on the suit land. The plaintiff further testified that this fact is concretized by the fact that the plaintiff has approved building and architectural plans (**PE6**) from the 1st defendant's predecessor which had been issued to the plaintiff's predecessor in 5 title (Senco Financial Services) and subsequently purchased by the plaintiff during the execution of **PE1**.

I have observed that **PE6** bears a stamp of Kampala City Council Planning and Land Management Department and the same is dated 30th March 2012 which is proof that the these building planning plans were approved by the 1st defendant's physical 10 planning department. I have also observed that according to the said plans, the suit land is in the extreme south of Kakoma Road and the northern side of Enterprise Road. However, according to said plans, neither of the aforementioned roads go through the suit land as an access road. This was equally observed in the deed plan

15 to the plaintiff's title and marked exhibit **DE2**.

On the other hand, it is the 1st defendant's contention that there has always existed an access road on the suit land even before the plaintiff's predecessor in title acquired a lease on the suit land. Dw1 (Asiimwe Christine), the Acting Manager Land Surveying in the Directorate of Physical Planning Department with the 1st defendant

of 2010 issued by Dr. Yafeesi Okia Commissioner of Surveys and Mapping attached

20 stated in paragraph 7 (a) of her witness statement that a 1993 Topographic map (DE1) of the area shows an access road going through the suit land.

According to the suit land's deed plan of 2007 issued by E. K Mbyetsiza-Commissioner of Lands and Surveys which is one of the attachments jointly marked as exhibit DE1, Plot 17A (suit land) as put by the 1st defendant squarely sits on the

25 southern part of Kakoma Road which joins Enterprise Road. The deed plan of 2007 does not show plot 17A as an existing plot either on Kakoma Road or Enterprise Road. This indicates that there are two conflicting deed plans, an earlier one of 2007 which shows an access road going through the suit land without plot 17A and the later one of 2010 which shows plot 17A.

- 5 It was the plaintiff's contention that the deed plan attached to his title makes no mention of an access road, however, during the locus in quo proceedings, it was observed by this court that Kakoma Road serves as the only direct point of access for all the land in the area including the neighbouring land to the suit land to join Enterprise Road. It is also evident from the aforementioned 2007 deed plan that Plot
- 10 17A wholly formed part and parcel of Kakoma Road which existed prior to the plaintiff and his predecessor's in title for the acquisition of the suit land.

Whereas, failure to point out the existence of an access road on the deed plan by the Cartography Drawing officials might be misleading, it does not eliminate the existence of an existing access road or easement. This position was well expounded

15 on by Hon. Justice Ssekaana Musa in the case of Stewart Gawayo Tegule versus Kampala City Council Authority where it was held that;

"... It could be true that the same was never marked-dotted on the plaintiff's certificate of title that does not mean it was illegally created to amount to trespass. It would be unfair to try and block this access 20 *road to the neighborhood and yet the same has been in existence for over 30 years. The court would imply an easement premised on the intention of the original parties and how they intended the same to be used. It is possible to create an easement simply by having used the property in a similar way before. The court will assume that the original* 25 *owners intended to create it as an easement but forgot to have the same noted on the title deed".*

In the unlikely circumstances that upon the plaintiff's predecessor's in title acquisition of its lease in 2011 (DE4), the suit land (Plot 17A) was reconstituted as a plot of land so as to enable the access road to be blocked as can be inferred from 30 the building plans and the 2010 deed plan, I would expect the plaintiff to adduce the

- 5 requisite documentation to prove that the plaintiff or his predecessor in title were authorized to block the said access road and proceed to change the usage of the land as per the provisions in **Section 61 of the Roads Act**. However, no such evidence was adduced by the plaintiff.
- During re-examination, Dw1 testified that whereas plot 17A is an access road, a 10 grantee of a lease can apply for a change of use of land, however, the witness testified that the same was not done in regard to the suit land as far as their records were concerned.

In the premises, following court's observations at the locus in quo and the aforementioned evidence presented, I am convinced that there has always existed an

- 15 access road passing through the suit land on the Southern part of Kakoma Road joining Enterprise Road. In case the plaintiff and his predecessor in title wanted to turn part of the access road into a plot, consent from the 1st defendant should have been sought in accordance with the provisions of the Physical Planning Act of 2010. The Physical Planning Committee of the 1st defendant would have sat and considered
- 20 the plaintiff's application for change of usage and made the necessary decision which would eventually be communicated to the plaintiff.

In addition to the above, at the time of purchase of the suit land, the plaintiff should have conducted proper due diligence which should be physical and documentary in this case. It should be noted that according to the Topographic maps 1993 series and

- 25 the deed plan of 2007 for Kakoma Road and Enterprise Road, plot 17A was nonexistent and the plaintiff who acquired the suit land in 2012 should have noticed that Kakoma Road was joining Enterprise Road and his intention to build a warehouse on the part where Kakoma Road was joining Enterprise Road, meant that Kakoma Road would never join Enterprise Road again, yet according to the expert
- 30 evidence of Dw1 and Dw3, a road joins other road networks and it is a continuous

5 circulation. The plaintiff who intended to block Kakoma Road from joining Enterprise Road wanted to turn Kakoma Road into a close which stops/terminates at a specific plot.

In the case of *Masaka Municipal Council versus Takaya Frank, CACA 173 of 2015*, Hon. Lady Justice Elizabeth Musoke observed that "In the present case, the 10 respondent knew or ought to have known that part of the land on which he was constructing was situated on a road reserve; and that this was an illegality for which he would face repercussions. The respondent must have been aware of the said illegalities long before he submitted the building plans to the appellant for development permission".

- 15 In the instant case, the plaintiff testified that he visited the suit land before purchasing it from his predecessor in title. During locus, it was clear that plot 17A was created to block Kakoma Road from joining Enterprise Road. This would have blocked the road users of both Kakoma and Enterprise Road which would negatively affect the public right of way by preventing the interconnection of the two roads. According
- 20 to the observations made by court, the plaintiff is a person without any form of disability and his vision is clear. The plaintiff is not a blind person. At the time of purchase, he ought to have understood that Kakoma Road interconnects with Enterprise Road and if he wanted to turn Kakoma Road into a close he should have sought consent from the 1st defendant. The plaintiff contravened the provisions of
- 25 the Roads Act and the Physical Planning Act by acquiring a title from an access road.

The evidence of Pw2 cannot be relied upon to indicate that the suit land was not an access road. Pw2 testified as a Surveyor who opened boundaries on behalf of the plaintiff and carried out valuation of the suit land. Section 19 (3) of the Surveyor's Registration Act prohibits any person from carrying out the practice of surveying 30 unless he or she is a holder of a valid practicing certificate. Dw2 did not produce a

Page 16 of 23

5 practicing certificate as a surveyor under the Surveyors Registration Act and his evidence cannot be relied upon.

Given the above reasons, plot 17A on Enterprise Road was created on an access road.

Issue No. 3

10 Whether the plaintiff has any interest in the suit property/ land.

Counsel for the plaintiff submitted that it is an uncontested fact that the plaintiff is the registered proprietor of the suit land hence has a valid interest in the suit land. In reply, counsel for the 1st defendant submitted that whereas **Section 59 of the Registration of Titles Act** guarantees conclusive evidence of title, the same can be 15 impeached on grounds of fraud, lack of consideration, or illegality.

It is counsel's argument that the plaintiff does not have any valid interest in the suit property on grounds of illegality on account of the fact that the 2nd defendant did not consent to the transfer of the suit land from Senko Financial Services to the plaintiff by the landlord which is a legal requirement hence nullifying the plaintiff's interest

in the suit land. Counsel for the 1st 20 defendant also submitted that should the court be inclined to find that the plaintiff has any interest in the suit land, the same should be subjected to prior existing rights, which in this case is the existence of an access road over the suit land prior to the plaintiff's acquisition of the same.

Analysis

25 In the case of **Musoke Mike & anor versus Kalumba James HCCR No. 9 of 2019**, Hon. Justice Bashaija K Andrew noted that, *"It is the established position of the law that illegality can be raised at any time before a court of law and it shall be investigated."* His Lordship cited the findings of the Court of Appeal in **Makula**

5 International Limited versus His Eminence Cardinal Nsubuga & Rev Fr. Dr. Kyeyune CACA No. 4 of 1981 which held that;

"A court of law cannot sanction what is illegal and illegality once brought to the attention of court overrides all questions of pleading, including any admission made thereon."

The **Black's Law Dictionary, 8th 10 Edition, page 2182** defines the term illegality as an act that is not authorized by law. This phrase was equally defined in the case of **Ojangole Patricia & 4 ors versus Attorney General HCMC No. 303 of 2013** to mean;

*"... when the decision-making authority commits an error of law in the 15 *process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality".**

As earlier intimated, it is an uncontested fact that the plaintiff is the registered proprietor of the suit land, however, the 1st defendant is querying the mode through which the plaintiff acquired an interest in the suit land. The 1st 20 defendant contends that the plaintiff's title is defective on grounds of lack of consent to transfer title from Senco Financial Services to the plaintiff by the Landlord (lessor).

Clause 2 (f) of the Lease Agreement (DE4) prohibits the sale of the suit land before the completion of the said building and obtaining a final occupation permit without 25 obtaining written consent of the lessor. During cross examination, the plaintiff (Pw1) testified that he was aware that consent needed to be sought from the 2nd defendant as the lessor before he purchased the suit land from Senco Financial Services Limited. However, the said written consent was not adduced in evidence, which makes it difficult for this court to confirm its existence, as the 2nd 5 defendant contended in its defence that the plaintiff is not known to them as their lessee.

It is trite that leases are premised on the law of contract. The condition set in Clause 2 (f) of DE4 is a covenant. The **Blacks' Law Dictionary (supra)** page 1100, a covenant is defined as a formal agreement or promise usually in a contract. A

10 covenant has also been defined as a legally binding promise or obligation, commonly found in business contracts, loan agreements, real estate deals and employment contracts. ("Enforcement of Covenants: Overview, Definition, and Example" 2025).

In the instant case, the plaintiff confirmed to this court that no building project has commenced on the suit land and the same was observed by court during the locus in

15 quo visit, therefore, the plaintiff acquired the suit land before the fulfillment of the aforementioned condition, which means that it was mandatory to seek written consent from the lessor before the plaintiff could purchase.

It was the plaintiff's evidence that Senco Financial Services ought to have solicited for consent from the 2nd defendant and not the plaintiff himself. However, I find this 20 argument to be unconvincing as there was need for the plaintiff to take all necessary steps on ground and legitimize his interest in the suit land. Clause 2 (f) of the lease agreement was very clear and provided as follows:-

"in addition to any covenant implied therein the lessee shall not, until he/she has completed the said buildings and obtained a final* 25 *occupation permit in respect thereof, sell or sublet or part with the possession of or suffer anyone to use or confer on anyone an equitable or in any way mortgage the said land or buildings or any part thereof without having first obtained the written consent of the lessor".*

Therefore, in the absence of the written consent from the lessor authorizing the 30 Senco Financial Services' sale of the suit land to the plaintiff, I am satisfied that the

5 plaintiff did not fulfill the requisite legal requirement of seeking for consent before he proceeded to purchase the suit land and have the same registered in his names which nullifies the plaintiff's interest. The plaintiff knew that he was purchasing a lease which was between the 2nd defendant as the lessor and Senco Financial Service Limited as the lessee. The plaintiff testified that he conducted a search at the Land 10 Registry and found that the land was registered in the names of Senco Financial Services. Exhibit PE1 which s the sale agreement between Senco Financial Services Ltd as the vendor and Mohammed Ssebagala as the purchaser is clear. The search report from Ministry of Lands Housing and Urban Devlopment dated 5th October 2018 and marked exhibit PE2 shows that the title is a leasehold under Leasehold 15 Register Volume 4196 Folio 1 land at Kampala Nakawa Division Enterprise Road plot 17A. This evidence is clear and it shows that the plaintiff knew that he was acquiring a leasehold interest from Senco Financial Services Ltd. Even paragraph 3 of the sale agreement (PE1) shows that the plaintiff was buying a leasehold interest. The plaintiff ought to have looked at the provisions of the lease agreement before 20 purchasing the leasehold interest from Senco Financial Services.

I am alive to the fact that a certificate of title should not be cancelled unless fraud has been proved and attributed on the side of the registered owner, however, it should be noted that in this case, the transfer of the leasehold interest from Senco Financial Services to the plaintiff was void ab initio since no consent was obtained from the 2nd defendant authorizing the sale between the plaintiff and Senco Financial Services Ltd. The lessor was not involved in the said transfer. This implies that there is no relationship between the plaintiff and the 2nd defendant who is the lessor and has the reversionary interest in the suit land. Therefore, the plaintiff has no legal interest in the suit land since there is no connection between him and the lessor. The 30 Commissioner Land Registration should cancel the plaintiff's certificate of title in

Page 20 of 23

5 respect of plot 17A Enterprise Road under Leasehold Register Volume 4196 Folio 1 land at Kampala Nakawa Division.

Therefore, this issue is resolved in the negative.

Issue No. 4

Whether the actions of the 1st 10 defendant were justified under the law

Counsel for the plaintiff submitted that the 1st defendant without any colour of right constructed a road progressing through the middle of the suit land leaving bits of the said land at the extreme hence rendering the suit land unproductive which actions were unjustified.

On the other hand, counsel for the 1st 15 defendant submitted that there has always existed an access road on the suit land as per the topographic map of 1993, deed plan of 2007 and the google time series images. Counsel further submitted that whereas the 1st defendant is mandated to maintain roads and drainages in Kampala, wherein in the instant case, National Water and Sewerage Cooperation installed drainage 20 pipes, however, it has never carried out any civil works on the contested portion of Kakoma Road, nor has the said road been maintained or upgraded. In the result, counsel submitted that its actions were lawfully justified seeing as there has always

existed an access road on the suit land.

Reference is made to this court's resolution in the preceding issues particularly issue 25 no. 2. Furthermore, having observed from the 1993 topography map as well as the 2007 deed plan of the suit land, I am convinced that there has always existed an access road on the suit land. Apart from the drainage channel constructed by National Water and Sewerage Cooperation whose existence the plaintiff does not seem to contest, court observed that the entire Kakoma Road is a murram or loose surface which has existed for a considerably long time, at least prior to the plaintiff and his predecessor's in title acquisition of the suit land serving the neighbourhood as an access road.

In the premises, I find that there has always existed an access road which forms part 10 of suit land (Plot 17A) prior to the plaintiff's acquisition of the suit land. The suit land forms part of an access road which falls within the jurisdiction of the 1st defendant, I am satisfied that the latter is mandated under **Section 7 (1) (g) of the Kampala Capital City Act** to construct and maintain roads, therefore any actions along these lines in regards to the suit land would be justified since the same is an 15 access road.

In conclusion, it is the finding of this court that there is a lawful access road progressing through the plaintiff's land comprised in Plot 17A.

Remedies

The plaintiff is not entitled to the remedies sought since he has failed to prove his 20 case in the affirmative.

Costs

Section 27 (1) of the Civil Procedure Act provides as follows: -

"Subject to the conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and* 25 *incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and give all necessary directions for the purpose aforesaid".*

5 In addition to the above, section 27 (2) of the Civil Procedure Act provides that "...costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order".

In the instant case, since the plaintiff has failed to prove his case as against the defendants he shall bear the costs of the suit.

- 10 In a nutshell, the plaintiff's suit against the defendants is dismissed with costs to the 1st and 2nd defendants. The following orders are hereby made:
- *a) The suit property is an access road connecting Kakoma Road to Enterprise Road in Nakawa Division, Kampala City.*
- *b) The plaintiff does not have any interest in the suit property.*
- 15 *c) The Commissioner Land Registration is hereby ordered to cancel the plaintiff's title in respect of Leasehold Register Volume 4196 Folio 1, Land at Kampala Nakawa Division, Enterprise Road Plot No. 17A within three months from today.*
- *d) The plaintiff is directed to handover the duplicate certificate of title in* 20 *respect of the suit land within one month from today to the Commissioner Land Registration for cancellation.*

- *e) The plaintiff shall pay the costs of this suit to the 1st and 2nd defendant.*

25 I SO ORDER.

Judgment delivered via ECCMIS this 25th day of April, 2025.

Immaculate Busingye Byaruhanga

Judge

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