

UGANDA / JUDGMENT

**Bugaga Maanyi Multipurpose Co-operative
Society LTD v Uganda National Roads
Authority (Civil Miscellaneous Application
12 of 2024) [2024] UGHC 693 (9 July 2024)**
[2024] UGHC 693

COURT

High Court of Uganda

BEFORE

Oyuko Anthony Ojok, J

CASE / FILE NUMBER

Civil Miscellaneous Application 12 of 2024

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT MPIGI****MISCELLANEOUS APPLICATION NO. 12 OF 2024****(Arising from Civil Suit No. 15 of 2019)**BUGAGA MAANYI MULTIPURPOSE CO-OPERATIVE SOCIETY LTD.... APPLICANT S **VERSUS****UGANDA NATIONAL ROADS AUTHORITY.....****BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK****Ruling**

The applicant brought the instant application by way of Notice of Motion under Order 9 Rule 12 and Order 46 Rule 1(1) of the Civil Procedure Rules, Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act against the respondent seeking the following orders:

- a. That the consent judgment which was entered between the parties before the High Court of Mpigi in Civil Suit No. 015 of 2019 be set aside or reviewed or varied.

- b. That the suit be fixed for hearing on its merits.
- c. That costs of the application be provided for.
- 20 The application is supported by an affidavit sworn by Hajji Khalid Manda the managing Director of the applicant company herein and the grounds briefly are as follows:
- a. That the applicant filed civil suit No. 015 of 2019 against the respondent for compensation of the fair market value of factory premises and structures, loss of business and income, special and general damages, interest, a permanent injunction and costs of the suit.
- b. That the applicant company went into negotiations with the respondent for the purposes of settling the matter and compensate the applicant company for its premises that were affected by the project for construction of Mpigi, Kanoni, Maddu-Ssembabule road.
- c. That the parties wrote several correspondences regarding the actual compensation to be awarded to the applicant company for halting its business.

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- d. That the applicant company further acquired the services of Roko Construction limited for the purposes of relocating and constructing factory structures, buildings, reservoirs, underground stores, facilities and a compound for drying coffee.
- e. That on the 21st day of August, 2023, the applicant company through its managing director, wrote to the respondent requesting for compensation which had been discontinued by the respondent of UGX \$4,194,913,488/\$ = that had earlier been agreed upon by the parties for purposes of cancelling all court cases.
- f. That on the 24th day of August, 2023 the applicant company was fraudulently misrepresented into entering a consent judgment to receive UGX 480,187,604/= as compensation to amicably settle the matter contrary to the earlier agreed UGX 4,194,913,488/ \$=\$.
- g. That the Managing Director to the applicant company was fraudulently misrepresented into entering a consent judgment to receive UGX \$480,187,604/\$ = as compensation to amicably settle the matter contrary to the earlier agreed UGX 4,194,913,488/ \$=\$.
- h. That the respondent never considered the quotation from Roko Construction company when coming up with a fair figure to be compensated to the applicant company for relocation and construction of new company premises which was so vital.
- i. That the said amount that was given to the applicant was unfair and the Managing Director of the Company was misrepresented to enter into a consent judgment.
- j. That the respondent wrote to the applicant company on the 15th day of April, 2024 and requested the applicant company to vacate its premises.

- k. That the said consent judgment was fraudulently entered into by the applicant company as the amount that was paid cannot facilitate the construction of new company premises.
- 1. That it was agreed before the said consent judgment that Civil Suit No. 015 of 2019 would be withdrawn after payment of UGX \$4,194,913,488/\$ = to the applicant company of which the applicant company was misrepresented into entering a consent judgment contrary to the earlier agreed terms by the parties.
- m. That it is in the best interest of justice that the consent judgment be set aside and the case heard on its merit or be reviewed and varied with the applicant being paid UGX 4,194,913,488/ \$=\$ as earlier had been agreed upon before the said consent judgment.

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The application was opposed through an affidavit sworn by Pecos Mutatina the Senior Legal Officer/advocate under the Directorate of Legal Services of the respondent who inter alia stated as follows;

- a. That the consent judgment was entered by both parties after protracted negotiations since 2016 and subsequent re-evaluation by the Chief Government Valuer. There was free will of all parties and no one was misrepresented, corted and or signed the consent judgment mistakenly.
- b. That the plaintiff was initially paid UGX 328,882,905/= inclusive of a 30% disturbance allowance on the 2nd December, 2014 for all the structures on the suit land, including a permanent factory building, two store houses, coffee drying pits, access steps, water tank stand, all the retaining walls and all the paved yards.
- c. That the defendant was also subsequently paid UGX 3,018,210/=inclusive of a 30% disturbance allowance for all the crops and standing trees on the suit land on 4th March, 2015.
- d. That however, the defendant was dissatisfied and submitted a claim of undervaluation. The defendant was re-assessed and paid an additional UGX \$340,022,150' \$ = inclusive of a disturbance allowance of 30% for all the structures and developments as mentioned above on 19th May, 2017.
- e. That thus the total compensation amount of UGX \$671,923,265/\$ = paid to the plaintiff was rejected by the plaintiff following which he filed a suit in court against the Authority.
- f. That the plaintiff filed a suit in Mpigi High Court Civil Suit No. 15 of 2019 and claimed the following reliefs;
- Factory structures and land worth USD 953,239. \$i.\$
- Loss of business and earnings from 2010 to date, vide; UGX ii. \$1,600,000/\$ = per day.

- Loss of opportunity for funding from Uganda Development Bank. iii.
- g. That the operation Wealth Creation by letter dated 21st October, 2022 requested for an amicable settlement of the claim and put the total claim at UGX 4,194,913,488.
- h. That a meeting was subsequently held with the applicant to explore the possibility of an amicable settlement. The meeting resolved that the respondent's land acquisition team conducts a further inspection of the suit premises to verify the claims raised by the applicant.
- i. That early in 2023, a team comprised of officers from land acquisition department including the head land acquisition and officers from the chief government valuers' office re-visited the site to once more objectively look at the factory premises and conclude on how to resolve the matter for good in lieu of the applicant's repeated claims of under-assessment.

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- j. That from the detailed site visit it was noted and observed by the team that:
- The thickness of the internal walls (twice as thick) had not been taken into consideration in the previous assessments.
- The reinforced concrete floors to support the installation and ii. operation of the factory equipment had been underestimated.
- The structure presented a challenge in that the building technology iii. adopted was obsolete and therefore need to provide a modern-day equivalent in replacement cost.
- k. That a supplementary report of UGX 600,234,505/= was prepared and approved by the Chief Government Valuer which considered all these aspects as well as re-assessed all structures there on the subject site to include also those that were injuriously affected by the main acquisition.
- 1. That the additional amount of UGX 600,234,505/= was agreed by the respondent and accepted by the applicant bringing the total amount the applicant would have received to UGX 1,269,139,560/ \$=\$.
- m. That following a meeting with the applicant, his counsel and representatives of operation wealth creation the parties agreed to a final settlement of the suit, resultant of which a consent judgment was signed by the applicant and respondent in the following terms:
- The respondent pays an additional sum of UGX 600,234,505/= in settlement of the suit.
- The respondent pays the costs of the suit.

- n. That the application is made mala fide and if allowed would prejudice the respondent thereby occasioning injustice to the respondent.
- The applicant swore an affidavit in rejoinder and inter alia deposed as follows; 25
- a. That in response to paragraphs 3 and 4 of the respondent's affidavit in reply, the said consent was full of deception, misrepresentation, the respondent, did not show the applicant the exact amount of money the Chief Government Valuer had come up to be compensated to the applicant after re-evaluation of the applicant's properties.
- b. That in reply to paragraphs 5, 6 and 7 of the affidavit in reply, the contents therein are denied as the same was made for earlier damages by the respondent to the applicant and not for the factory premises and its structures. That is annexures X and Y.
- c. That I have been informed by the afore-mentioned lawyers that failure to disclose the said report from the chief Government Valuer to the applicant was intended to defraud, misrepresent to the applicant the exact amount of money he was entitled to receive as compensation.

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- d. That in specific reply to paragraph 16 of the affidavit in reply even the settlement terms stated therein are not reflected in the consent judgment.

Representation:

Mr. Derrick Lutalo together with Ismail K. appeared for the applicant while Mr. Titus Kamyé appeared for the respondent. Both parties made oral submissions.

Submissions:

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Counsel submitted that the total compensation agreed upon was UGX \$4,194,913,488\$ = however in the consent a different amount was stated that was never agreed upon. Counsel relied on Sections 4 and 5 of the Illiterate Persons Act which are to the effect that there must be a certificate of translation and in the instant case it is missing in this consent judgment. That it was instead smuggled in as a separate document. That when the applicant signed the consent his understanding was that he was getting UGX 4,194,913,488/=. That as such the consent judgment should be reviewed and set aside and the parties be given a chance to be heard.

In reply it was submitted that the application does not disclose any grounds for setting aside the consent judgment. That whereas, the applicant states that there was fraud he does not particularize what this fraud entitles. Thus, the applicant has failed to prove existence of fraud.

Counsel for the respondent submitted that even though the applicant claimed that 20 there was misrepresentation, he did not say by who. That the consent judgment in the instant case emanates from the compulsory acquisition of land by Government for purposes of acquisition of a right of way including a road reserve. That there were several negotiations between the applicant and the respondent whereof the applicant was paid the first instalment in December, 2014 and another payment 25 was made in 2017. That upon reassessment the applicant was meant to receive a total of UGX 1,269,139,560/= with UGX 600,234,505/= being the additional amount of money agreed upon for the final settlement of the applicant's claim. That it was upon that arrangement that the parties entered the consent judgment. As such there was no confusion, mistake or misrepresentation in the mind of the 30

applicant when it finally executed the consent judgment with the respondent.

Counsel further submitted that the affidavit in rejoinder does not dispute the facts and the money reflected in annexure "A" which is the valuation report prepared for the applicant. That this is not a valuation report justifying the four billion claimed as this is a quotation from Roko Construction Ltd for a proposed factory structure. That a proposal is not a quotation of the existing structures which in this case was an old structure. And besides Roko Construction is not a valuation

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company. That the applicant is also well aware of how the split of the money into which account was reached with the money indicated both in figures and words. Additionally, that the certificate of translation is very clear and on court record. That it would have been different if there was none on record. That the applicant

was represented by counsel who was well aware of the contents of the consent and $\$S$ signed it, read it back to the person to confirm the contents.

Counsel noted that bad bargain is not a ground to set aside a consent judgment or vitiate a contract. That the applicant had the option of appealing to the chief government Valuer but this was not done. That Section 13 of the Land Acquisition

Act gives an aggrieved party 60 days within which to appeal and failure to do so, 10 it would be a non-starter since the party would be time barred by the time set by law and it cannot be extended by court. That this application has been filed belatedly and it cannot be a contest against the chief government valuer.

Counsel concluded that the judgment should be left intact and the application dismissed with costs to the respondent. That the applicant has been severally 15 coming to ask for more money but there must be an end to litigation.

In rejoinder counsel for the applicant submitted that the first figure was UGX 600,000,000/=. That the respondent went back and the figure they found befitting was another UGX 600,000,000/= that this means that the chief Government valuer was not doing a good job. That the instant

application is about setting aside a consent judgment and not for an application for enlargement of time. That the application was filed 7 days after the respondent issued a notice to vacate yet the applicant had not received the sum he wanted. Counsel added that the respondent did not attach any documents to the affidavit in reply as proof and there was misrepresentation.

Further, that by practice, court interprets a consent, it is read out to the parties before signing, that had the registrar said that she would not sign without a certificate of translation, the prudent lawyer would have retyped the very document and returned it to court for endorsement. Counsel relied on Section 92 of the Evidence Act, that a document speaks for itself. That in the instant case there was no certificate of translation and no amount of oral evidence can be tendered in court to justify it.

Counsel concluded that the consent offends the law and was procured through misrepresentation and mistake by the applicant's managing director. As such it should be set aside and prayed that court visits locus before it makes its decision.

Analysis of court:

I have carefully considered the oral submissions of both parties, the law and authorities cited therein.

The law is now settled on the conditions for reviewing and or setting aside a Consent Judgment. In *Attorney General & Another v. James Mark Kamoga & Another*, Miscellaneous Application No. 1018 of 2015, the Supreme Court of Uganda laid down the principles upon which the court may interfere with a Consent Judgment as stated by the Court of Appeal for East Africa in *Hirani versus Kassam (1952) EA 131*, which approved and adopted the following passage from Seaton on Judgments and Orders, 7th Ed., Vol. 1 p. 124:

"Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court ... or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement."

Subsequently, that same Court reiterated the principle in *Brooke Bond Liebig (T) Ltd v. Mallya* 1975 EA 266 and the Supreme Court of Uganda followed it in *Mohamed Allibhai v. W. E. Bukenya and Another* Civil Appeal No.56 of 1996 (unreported). Therefore, it is a well settled principle that a Consent Judgment has to be upheld unless it is vitiated by a reason that would enable a court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy.

- In the instant case it was submitted for the applicant that the managing director of 25 the applicant was fraudulently represented however, no details as to or how the misrepresentation occurred were given and by whom. No particulars as to fraud was also adduced, it is therefore not known how the applicant was fraudulently misrepresented during the signing of the consent judgment.
- Counsel for the applicant also contended that the certificate of translation as 30 attached to the consent judgment was smuggled in. It is hard for this court to determine the truthfulness of this allegation however, I have looked at the proceedings before the Assistant Registrar who before signing the consent judgment asked the representative of the applicant company if he had understood
- the contents of the consent judgment. He stated that he had understood the same 35 and confirmed the contents as that which were agreed upon so did his counsel. The applicant's representative also availed court with his NIN and telephone

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number. As is a practice in our courts that when faced with an illiterate person, the proceedings of court are translated to them in a language that they understand which the case was in the instant matter. The applicant's representative therefore understood what was in the consent agreement and as such I do not find any issue

with the certificate of translation that was on the next page of the consent judgment. I am confident that the applicant's representative understood what was going on and what he was signing against as the same was translated to him.

Secondly, the applicant relied on a proposal made by Roko construction that gave their quotation for construction of a new factory which in my view is not a valuation. The applicant being dissatisfied with the valuation made by the government valuer should have made an appeal within 60 days against the same which he did not do.

The cases as cited by counsel for the applicant though good law are inapplicable to the instant case. The applicant was unable to prove that there was any misrepresentation, connivance or fraud in reaching the consent judgment.

In the instant case, there was therefore no fraud, mistake, misapprehension or contravention of court policy found upon perusal of the court record. The Consent Judgment was entered into freely by both parties and in further fulfilment of the initial agreed upon amounts of money as compensation to the applicant.

As such I find that the applicant has not satisfied this court that there are any 20 grounds to set aside the consent judgment. I accordingly find no reason to set aside the Consent Judgment. This application is hereby dismissed with costs.

OYUKO ANTHONY OJOK 25

JUDGE

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Prepared on 13 October 2026 · Esheria