

UGANDA / JUDGMENT

**Byoleko (represented by his personal
representative Edward Kanyarusoke) v
Kampala
Capital City Authority & Others (Civil Suit No.
128 of 2016) [2022] UGHCLD 124 (14 June 2022)**
[2022] UGHCLD 124

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Suit No. 128 of 2016

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

naTHE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****CIVIL SUIT NO. 128 OF 2016**

EPAFURA BYOLEKO (represented by his

personal representative: Edward Kanyarusoke)..... PLAINTIFF

 $\$ \backslash \text{mathsf{S}} \$$ **VERSUS**

- 1. KAMPALA CITY COUNCIL AUTHORITY
- 2. ATTORNEY GENERAL (struck of the record by consent of all parties)
- 3. KIGOZI RICHARD.....

15 Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT:**Introduction:**

The plaintiff is the registered proprietor of land comprised in *Kibuga Block 38 Plot 20 land at* 20 Makerere (suit land). Upon his demise, court appointed his son Mr. Edward Kanyarusoke as his legal representative to complete this suit.

He filed this suit against the defendants, seeking a declaration: that the \$1^{st}\$ and \$3^{rd}\$ defendants are trespassers on his land; a declaration that the 1st defendant compulsory acquired the suit land without compensating the plaintiff; an order compelling the 1st defendant to remove the drainage

25 channel created in the suit land; a permanent injunction restraining the defendants from further trespassing on the suit land; compensation from the defendants for the value of the land illegally acquired general damages; and costs of the suit.

Duboug

It was the plaintiff's claim that at the time he took over possession of the suit land it was comprised in one piece and was not divided by any drainage channel, neither did it have a road cutting through.

The 1st defendant (KCCA) without any color of right or obtaining or compensating the plaintiff, \$\\mathsf{S}\$ diverted a drainage channel which formerly used to flow between the neighbouring *plots 29 and* \$21\$ as per the deed prints to the certificate of title to instead flow through the plaintiff's plot 20, thus causing a drainage channel to be illegally created unto the plaintiff's land.

The plaintiff also claimed that the 3rd defendant, Mr. Kigozi Richard took advantage of the situation and on 25th December 2014, without the plaintiff's prior consent, poured murram soil on one side of the land and created an illegal access road thereon.

That the drainage was poorly maintained by the 1st defendant and carries foul smelling solid and liquid waste/sewage which has continued to destroy the plaintiff's land and pose a serious health hazard to the occupants.

The 1st and 3rd defendants filed WSD denying the claims.

Issues arising for determination by court. 15

At the conferencing, the following issues were framed for determination.

1) Whether the plaintiff's suit discloses a cause of action against the defendants;

2) Whether the \$1^{st}\$ and \$3^{rd}\$ defendants trespassed on the plaintiff's land;

20

- 3) Whether the 1^{st} defendant compulsorily acquired the plaintiff's land and if so, whether the acquisition was lawful;

4) Whether the plaintiff is entitled to the reliefs sought?

25 Resolution of the issues:

Auto Garage Vs Motokov (1971) E. A 519 gives the following three essential elements: that the plaintiff enjoyed a right; the right was violated and that the defendant was liable. A cause of action is established where pleadings disclose that there is a right, a right is violated and that the defendant is liable. A reasonable cause of action is one which in light of the pleadings has some chance of success. (H. C. M. A No. 111 of 2013: Harriet Fowler & Anor vs Arthur Busingye).

Jahory

The plaintiff presented a certificate of title (PEXh7), which shows him as the registered owner of plot 20. His name was entered onto the title on the 9th, August, 1996. He claimed that his right to quiet enjoyment and occupation of the suit land as a registered proprietor had been violated by the defendants who created an illegal drainage and access road through his land and without

his permission.

> Furthermore, that the KCCA diverted the drainage channel from its original place, a few blocks away and made it flow through his land thus creating a drainage channel which cut the suit land into two pieces.

That the 3rd defendant taking advantage of KCCA's actions started using one portion of the suit land as an access road and that KCCA has since continued to preserve the drainage channel over the suit land without compensating the plaintiff. 10

That correspondences from KCCA to the plaintiff clearly indicated that the drainage channel and the access road created on his land were not gazetted and as such illegal and amounting to trespass.

Since he was neither consulted nor compensated by KCCA, such actions amounted to compulsory acquisition of his land, which claims were however refuted by KCCA and the 3rd defendant in their respective WSI)s-15

The subject matter of the dispute as I understand it therefore rotates around two main questions which, applying my discretion under Order 75 rule 5 of the Civil Procedure Rules, I shall amend as follows:

- Whether the 7th defendant (KCCA) compulsorily acquired the plaintiff's land and if so, whether the acquisition was lawful? 1

- 2, Whether or not the 3d defendant created an access road. without the consent and knowledge of the plaintiff.

Issue No. 7: Whether the 7th defendant (KCCA) compulsorily acquired the plaintiff's land and, if so, whether the acquisition was lawful?

The plaintiff alleged that the defendants' actions of creating an access road and an open drainage channel overplot 20 (suit land) neither of which had been gazetted amounted to trespass on the land and compulsory acquisition of his property by KCCA, without compensation.

Counsel cited ILC. C. S. No. 18 of 2072, Tugebua George Jireg and Anor Vs Kagimu Ngudde Mustajo.; Justice E. M. N. Lutqga Vs Sterling Clull Engineering Co, SCCA No. 77 of 2002

Upheld

wherein court laid down the ingredients of trespass on land as follows: that the disputed land belonged to the plaintiff; the defendant had entered upon it; the entry was unlawful in that it was made without permission or that the defendant had no claim or right or interest in the disputed land.

5 The plaintiff relied on the evidence of two witnesses. First, Mr. Edward Kanyarusoke a son and legal representative of the plaintiff testified in paragraph 4 of his witness statement that at the time the plaintiff took possession of the suit land, it was comprised in one block, was not divided by any drainage channel neither did it have a drainage passing through.

Furthermore in paragraph 6 of his witness statement that the only existing drainage channel in the area was a few blocks away from the plaintiff's land. Originally the drainage flow was on the upper side of Nkizi Road passing through Plots 29 and 27 on Kibuga Block 38 but had been diverted by the KCCA, to run through his plot 20. 10

This evidence was corroborated by the field surveyor who testified as a court witness. First, Mr. Humphrey Mitinda interpreted the deed plan of Block 38 for court, proving that the channel

- was passing through an area which had not been originally intended for it, cutting the suit land into two parts: that is, a bigger portion on which the plaintiff operates his garage business and a smaller portion on the other side of the drainage channel. It was the plaintiff's further contention that the waste water running through had started damaging the structures of the garage. 15
- The defendants in their respective WSIs however pleaded that the said Nkizi road alleged to be trespassing on the plaintiff's land had existed as far back as the year 1996 as an easement to the neighbouring plots, before the plaintiff became the registered proprietor. 20

According to the 1st defendant's pleadings, KCCA has never diverted the drainage channel as alleged by the plaintiff from its original place to the plaintiff's land as the same existed even before the plaintiff became the registered owner of the suit land. That the plaintiff had been fully aware of the existence of the said road and drainage channel. His claim therefore was only intended for his unjust enrichment. 25

During cross examination, Daniel Kaweesa the sole witness for the KCCA, testified that drainage channels and roads must be gazetted and confirmed that the one which passed through plot 20 was never gazetted.

He admitted during cross examination that the KCCA created a cross culvert from one end of the road to the other, which diverts the drain water to flow to plot 20. Cyril Humphrey Mitanda tendered in a survey report IPEXh E, of the suit land.

U[

In his cross examination he informed court that according to the deed print there was no drainage channel or road cutting through plot 20 (the suit land).

During the locus visit he showed court where according to the deed print the access road and drainage channel should be flowing, and that was between plots 27 and 29, but not plot 20 which is owned by the plaintiff.

> Counsel for the plaintiff referred to correspondences made between KCCA and the plaintiff (PEXh 9 and PEXh 10 in which KCCA had written to the plaintiff confirming that there existed a drainage and a road on plot 20 (the suit land) which had not been gazetted.

He dismissed the argument by the defendants that the access road through the suit land was created to serve Makerere University students to access Mulago Hospital as false and untenable, thus making the defendants mere trespassers on the suit land. 10

From the evidence on record the plaintiff claimed to have proved on a balance of probabilities that the drainage channel and the access road never used to pass through the suit land but were rather illegally created by the defendants without the prior consent and/or compensation of the plaintiff, which amounted to compulsory acquisition of his land.

The law:

Section 707 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person,

20 Section 103 further stipulates that:

"The burden of proof as to any particular fact lies on that person who alleges the court to believe in its existence."

Article 25(2ff) of the 1995 Constitution of the Republic of Uganda, stipulates that no person is to be deprived of property or any interest in or right over property unless the person is promptly and adequately compensated prior to the taking of possession or acquisition of the property.

Section 2 of the Land Acquisition Act, Cap. 226, gives power to a person authorized by the Minister to enter upon the land; survey the land; dig or bore into the subsoil and remove samples; and do any other thing necessary for ascertaining its suitability.

Section 3(2) thereof, (government is required to pay compensation to any person who suffers damage as a result of the exercise of the powers conferred by the Act. Section 3(7)

is clear indication that when land is required for public purpose the Minister must make a declaration to that effect by statutory instrument. It is then that the land is marked out and measured; and a plan of the land to be acquired is made, if not already made. (section 4).

Under section 5, a notice in the gazette must be given to all concerned parties not later than 30 days after the publication in the gazette, requiring them to appear and state their objections among others, to the plan.

KCCA in its defence while denying that it had compulsorily acquired the plaintiffs land, contended that the Nkinzi road alleged to be trespassing on the plaintiffs land had existed as far back as the year 1996 as a right of way providing access to the neighboring plots.

KCCA also denied having diverted the drainage channel as alleged by the plaintiff from its original place to the suit land since the same had existed even before the plaintiff became the registered owner of the suit land, contending that the plaintiff acquired title over the suit land, while fully aware of the existence of the road and drainage channel. 10

KCCA relying on the statement by Pw2 that the access road had been created by the 3rd defendant, maintained that the statement had exonerated it from liability,

It was also noted by this court that the certificate of title was obtained by the plaintiff on 9th August, 1996. The first complaint appearing on record to have been raised by him concerning this matter was addressed to KCCA, dated 1st August, 2001 and titled: Changed Drainage System.

In that letter, the plaintiff requested KCCA to construct a proper drainage to stop water from stagnating on his land. (PExh 2), the letter was addressed to the City Engineer, Kawempe Division and copied to other departments within the Authority. 20

It was written by counsel representing the plaintiff at the time: M/s Twirusheme, Kabega & Co. Advocates.

25 It states

Sometime back, you without his knowledge and consent changed the drainage system in the area from its planned position to a new one passing under and/or near his land and buildings ⁷his ruins because a storied house across the original drainage system! emphasis mine

30 As a result of the above changes, running water has extensively damaged our client's house and garage. The house and perimeter wall are on the verge of collapse. His (plaintiffs)

concerns have been brought to your attention a number of occasions but no positive steps have been taken. Our client at one time requested you to construct a proper drainage to *stop the water from stagnating on his land but you refused.*

Our instructions are to demand as we hereby do, that you immediately construct a proper drainage system to prevent water from damaging our client's land...(emphasis added).

PExh 4, is another letter dated 14th of June, 2003, addressed to KCC. It referred to some time back in 1994 when the former KCC Engineering department of Kawempe Division divided the land into two parts by changing the drainage system from its original plan and digging into his plot.

10 That when the plaintiff protested, the agents of KCC decided to leave the sewage/drainage open to drop all the waste in that plot, without due consideration of the health hazards it entailed, let alone denying him the right to use the plot to full effect.

Furthermore that the Town Clerk made a verbal commitment to cover up the channel once funds were available, which commitment apparently he never fulfilled.

15 On 28th January, 2006 some three years later, the plaintiff E. M Byoleko, wrote again, this time as director of B. K Motor Garage. (Refer to **PExh 3**) to the Town Clerk Kawempe Division, with a copy to the City Engineer.

His complaint again was that his plot had been divided into two portions. He reminded the Town Clerk of the several times he had written to the institution and their failure to act on his request. He made another request to him to have the drainage channel repaired, back to its original position so that he could enlarge the garage business.

A response was made dated 27th March, 2014 by Eng. Justus Akankwasa, Deputy Director Buildings and Drainage to yet another one by the plaintiff dated 10th March, 2014. The first step therefore towards corrective action by KCCA therefore came after 13 years, following constant

25 reminders by the plaintiff. KCCA in its reply indicated to the plaintiff that a site visit had been made. (Refer: **PExh 9**).

KCCA committed itself to open up boundaries of the **plot 20** and neighboring properties and guide on the access road and proposed that after obtaining guidance from the Physical Planning Directorate they would be able to handle the request for a closed drain on the suit land.

30 PExh 10 is the subsequent correspondence to the plaintiff, dated 7th May, 2014. Eng. Justus Akankwasa, wrote to say that based on the guidance of Physical Planning Department it was

$\$S$

noted that there was an existing drainage channel that passes through plot 20 and on the side there is an access road that connects to the behind plots.

That both the drainage channel and access road were on the suit land and that though the access road was not gazetted, it had been created to serve the neighboring plots. Based on the above

5 guidance as well as the observed direction of the drainage channel as admitted by KCCA, the plaintiff was requested to provide engineering drawings showing the proposed plan for a closed drain at this location.

That it was only after review and approval of the above design that repair/ construction works on this section were to be allowed to commence. It is not known if the drawings were made by the plaintiff since court found no reply to that letter.

What is on record however is the fact that on 2nd October, 2015 the plaintiff through his counsel took the decision to file both a notice to sue and a statutory notice to sue. [PE:ch 5 and PExh 6).

On 8th April, 2014 a survey (PExh 1) was conducted by Cut7, I Lumphrey Mitanda a Consultant 1, and surveyor with M/s Synergic Surveys & Associates. The report noted that a water drainage channel of three metres wide passes through the plot and hence making approximately 0.005 acres (PE:ch 8j). He also informed court that the drainage is a natural stream that had been developed through the land. 15

A second report was a one page report DExh 2, dated 26th April, 2016 tendered in court by the same person, this time for the 3rd defendant. It had a sketch showing a water stream that runs from Nkinzi road alongside plot 20 and on the edge of plot 79, and beyond. 20

It was the only access road shown on the sketch. The said channel had a stream, a drainage and access road all in the same area and indeed as established by the survey report, and as seen by court during the locus visit, these features encroached partly on to the suit plot. The extent of the encroachment could not be determined with certainty, from the survey findings.

PurI Charles K. Okolong, a registered surveyor with M/s Oringo & Compdny carried out an inspection and evaluation report for the suit land. In his report, PExh 7, dated gth September, 20i5 he rferred to an approximate O. 007 <>f an acre as having been taken up by the drainage and the new access road. However a perusal of the survey report on which he relied showed an area of 0.005 of an acre. 30

Yet another surveyor's report by Cqr-l dated 1U'h July,2016 addressed to this court confirmed that the drainage channel passed into plot 20, An area of 0.01 acres was estimated as the actual

8 *4

area of encroachment by the channel. Both CpI qnd Pw7's findings therefore required further verification on account of those discrepancies, which court failed to reconcile.

But bc that as it may, there was no doubting the fact that the water flow and access road were partly on the suit land. However save for the diversion of the drainage water, there was no evidence directly linking the KCCA to the encroachment, so as to lead to the conclusion that it compulsorily acquired a portion of the suit land within the meaning of the Land Acquisition Act so as to justify an award for compensation to the plaintiff

What the evidence led by the plaintiff was able to establish however was that KCCA all along knew about the perennial problem but actually failed/omitted/ refused to address it at the appropriate time, despite the numerous reminders.

This was a potential health hazard not only to the plaintiff, but to the entire community KCCA was obliged to serve. It failed to carry out its duties to ensure proper maintenance of the water channel; failing to monitor, evaluate, oversee and maintain the public facility up to the required standards.

KCCA is faulted by its failure to rectify the problem which over time developed into a matter of serious concern for the entire community as the open channel collected all the litter and garbage for the growing population in that area, pouring everything into the swamp and making the place almost inhabitable, making it an eyesore . 15

But as deduced from the contents of the various correspondences between KCCA and the plaintiff the problem on this land had started in 1994, even before the plaintiff had acquired the title to that land-20

The suggestion made by the defendants in submission which court subscribes to, was that the plaintiff was aware of the division of the plot and so ought to have reasonably foreseen the potential risks and hazards which the drainage on his land presented, before buying and settling on that land.

DruI, Kawccsa's evidcncc as a KCCA enginecr was absolutcly crucial to this case. Ile testified that an outlet had bccn crcatcd by KCC^ to pour water and scwage in plot 20. Ilcforc thcn, it was passing through thc ncighbouring plots 27 a^d.29 wherc it had bccn gazetted to flow, as clearly markcd on the dced plan.

KCCA howcvcr blockcd it, rcdirecting it to pass through thc lowcr sidc wherc it found its way to plot 20. That complaints about thc drainage bccgan as far back as 1994. Thc said witness confirmed that thc road had bccn illegallly crcatcd as it was ncvcrgazctted. 30

\\$t'1""6

$\overline{a}$ $\overline{a}$

It did not appear on the dced print and that this had affctcd thc sizc of plot 20, reducing il by about 0.005 acrcs, estimatcd by him as thc sizc/area of encroachment. According to Dro4, thcs plots had bccn creatcd in thc 1968s by KCC.

Court thcrforc found it rather absurd that KCCA which creatcd thc problem for thc community was unable to find appropriatc solutions for it.

It had initially committed itself to open thc boundaries and maintaining thc drainage channcl but cvcntually did not. It later on tricd to shift thc burdcn to thc plaintiff bcing thc owncr of thc affctcd plot.

KCCA also failcd to givc an appropriatc rcsponsc to thc serious allegation madc that it had 10 changcd thc drainage systcm in thc arca from its planned gaT,cttcd position to a ncw onc passing undcr and/or ncar thc plaintiffs buildings; and that this was bccausc somc onc in thc ncighborhood had put up a storicd housc across thc original drainage systcm.

The Authority takcs thc blame thcrforc for its failurc to pay attcntion and/or takc into serious considcration thc ovcrall cffcct this could havc on thc community. I,'rom thc abovc findings thcrforc, a right to a hcalthy cnvironmcnt owd to thc plaintiff did exist and was violatcd by KCCA.

thc 3'd delcndqnt creqted. qn access road, without thc con,sent slltlepk4s e o. Llhc plqintilJ.

Thc claim against thc 3,d dcfcndant as thc rcsistcred owncr of plot I9, was madc by Pw2, Mr. Fldward Kanyarusokc that thc 3d dcfcndant took advantagc during thc Christmas holiday in I)ccmber, 2014 to creatc an acccss road on thc plaintiff's plot. Ile claimcd that thc 3,d dcfcndant's plot originallly had an acccss road which was not through thc suit land. 20

I.'urthcrmore, rn paragraph i I of his witness statcmcnt that thc 3(l dcfcndant ncvcrcbtaincd a pcrmit to construct thc road on thc suit land. It was thc plaintiffs conclusion that thc dcfcndants

trcspasscd on thc plaintiffs land by crcating an illegal drainage channcl and access road thcrcon and had donc so without his consent. 25

Dut7, Krgozi Richard the 3.d defendant in his defence however denied responsibility for the creation of the access road, claiming that at the time he purchased his land in 2007 the access road which currently serves his land, his neighbours and the community of both Kimwanyi and 30 Ilusia 7, once, was already in existence..

This was corroborated by Dro4, one Kabahwiza Chucu Keroi. She had lived in Wandegya for more than 30 years and only stopped being the Chairperson in the previous elections. In her

test

evidence she stated that she never saw KCCA create a drainage or a road on the suit land which was originally a swamp.

That KCCA's role was merely to maintain the drainage which it never created, and which according to Dro4 has existed over the years, claims which the plaintiff disputed but failed to disprove.

> In reaction to that, KCCA claimed that the above evidence was enough to exonerate it from the allegation that it had been involved in the illegal access road. That the liability if any, fell squarely on the 3.d defendant who was neither a servant nor an agent of KCCA.

Counsel for the 3rd defendant however referred to the last paragraph of PExh 4, a letter dated 14th June, 2003 which was a complaint to KCCA where the plaintiff stated as follows: 10

> Now my plot was used as a walking path but to my surprise 91 Le1]t-leiohbor forcefully used it as a stepping stone to construct an access road to his place having changed the access to its place.. (emphasis added.).

It is upon this that I am requesting your humble office to come to my rescue to rectify the issue of the sewage line that had been disposing waste in my plot for the last 20 years and the access road that

As already noted the complaint was made in reference to incidents that had occurred around 1994, long before the 3rd defendant had bought plot 19, also before the plaintiff had bought his land.

The 3.d defendant therefore denied any act of trespass claiming that the water flowing from plot 20 (suit land) passed through his land and also partly affected plots 21 adjacent to plot 20, as well as plot 22. 20

Irur3, Wasswa Hassan, who had been chairman of the Kimwanyi zone area since 1993 told court that there was a drainage which posed a security threat; and an access road created before the plaintiff bought the suit land and that the drainage was there even before he became the LC of the area.

That sometime in 2014, the 3rd defendant had consulted the area leaders about the need to cover the drain since both plots 79 and 20 were affected equally by the drainage channel but that when he approached his neighbor he did not buy the idea.

That the LCs had also approached him regarding this matter, but he still showed no interest. They advised the 3rd defendant to go ahead and work on his part of the drainage which he had done, with mobilization of the community through bulungi bircensi efforts. 30

'ut')"

The witness faulted the plaintiff for suing the 3rd defendant before consulting the local leaders who had the prior knowledge and history of the area.

The evidence of both witnesses, Dut3 and Du4 which court found no reason to doubt was that the access road was originally created by medical students of Makerere University in the 1970s

5 under the leadership of Otunnu and it has since been referred to as Otunnu road, and expanded into a bigger road with the help of the community, which claims the plaintiff refuted as intended to mislead court.

Upon inspecting the alleged access road during the locus visit, court noted that a fair access to plot 19 belonging to the 3rd defendant from plot 20 (suit land) did exist. However that there was limited access for vehicles going beyond plot 79 up to Ilinaisa Road.

The question therefore whether or not the 3rd defendant created an access road, without the consent and knowledge of the plaintiff therefore did not arise.

Conclusion-

Access was defined in the case of Mugisha Stephen Vs Karugaba Foster -HCES No, OOSO of

- 3013 where court relied on the Basic Law of Uganda, article 6.1 defining the right vested in the owner of the land which adjoins a road or other highway to go and return from his own land to high way without obstruction, Access to property does not necessarily carry with it possession. 15
- Such evidence as highlighted above proved that an access road was in existence prior to 2007, when the 3rd defendant purchased the land for use but not for possession by KCCA or any member of the community, 20

With assistance by the community and consultation with the LCs, the 3rd defendant acted in good faith when he repaired for the community what was already in existence, The evidence that the plaintiff had been consulted but declined to cooperate proved he had knowledge of whatever was happening. 25

> Also as correctly pointed out by counsel for the 3^d defendant, when a person purchases land and becomes the registered proprietor of the same, he does so subject to the existing rights on the land, which includes easements.

Where an easement in the land is created, a person has a right to use the same, subject of course to the owner's rights. An easement does not confer ownership/ possession but it confers a right to use/ access. 30

$\cdot \overline{}$

The plaintiff did not adduce any evidence to support his belief that it was the 3rd defendant who had initially created the ungated access road, and that when he poured the soil on the land it was for his sole benefit and exclusive use/selfish gain. The plaintiff's complaint against his neighbor was therefore misdirected and not well thought out.

5 In light of the above findings, the creation of the road did not happen at the instance of the 3rd defendant in 2014 but some years before the 3rd defendant purchased his land and for ease of quick passage to Mulago by students.

As declared in *Barclays Bank versus Patel* [79701 EA 99] a way of necessity arose by operation of law and it continues to exist notwithstanding that it was not referred to in the certificate of title to the servient tenement. Blocking the road would deny the community in the area access to their homes.

From Pur2's evidence at cross-examination all in all, what his father had actually wanted was a proper constructed drainage by KCCA and gathered from the evidence of Patrick Kaweesa, DUI he wanted KCCA to align the existing natural drain in his land to limit its expansion and also to protect the existing structures. 15

It was also his evidence which was confirmed by court following the locus visit that the lower end of Nkinzi Road was covered by natural developed swamp where the surface flow from Nkinzi Road was directed. The correspondences PExh9 and PExhTO proved that the KCCA did acknowledge its mandate to manage the drainage. But deliberately failed to meet that expectation.

The plaintiff to that extent had a cause of action against KCCA. In response to Issue No. 2, no cause of action was disclosed against the 3rd defendant. 20

Issue Two. 4 Retained:

The plaintiff's prayers therefore were: (i) declaration that the plaintiff is the rightful owner of the suit land; the defendants are trespassers on the plaintiff's land; an order compelling the 1st defendant (KCCA) to move the drainage channel back to the original position of the boundary between plots

27 and 29; or direct it to move to another main channel but not through the plaintiffs' land.

The plaintiff also prayed for a permanent injunction against the defendants, their assigns and successors in title from further trespassing on the suit land; and compensation for the illegal occupation, development and unplanned use of his land in respect of the value of the suit land

that was illegally acquired by the defendants. 30

.

According to Black's Law Dictionary, 8th Edition, Page 307 compensation means payment of damages or any other act that a court orders to be done by a person who has caused the injury to another.

5 The compensation in this case was in respect of the injury suffered by the plaintiff on account of the KCCA's failure to fulfill its role of maintaining public facilities as mandated by law, thus causing inconvenience and exposing the plaintiff and the community to health hazard over a period of time. This court faults the KCCA on account of its decision to divert the flow of drainage water to an area which had not been planned, without giving proper explanation.

Mr. Charles Okolong a land valuer who testified as Pw1 tendered a valuation report of the suit land dated 29 September 2015. (See PExh-7) which indicated that the value of the land taken by the access road and drainage was UGX 116, 889,500/=. He claimed however that given the passage of time the value of the affected land had now accumulated to UGX 233, 779,000/=. His estimated value of the land was UGX 7,500,000,000/-. 10

The above notwithstanding, there was no evidence to merit that award since the plaintiff had failed to prove that the KCCA had compulsorily acquired any portion of the plaintiffs' land. Besides, the court noted that the actual area affected was never ascertained.

Secondly, the plaintiff was fully aware of the challenges and possible risks of acquiring land which from the plaintiffs' correspondences with KCCA, already had a drainage flow and a pathway even before he purchased that land in 1996.

Thirdly, the community which had created the easement which later became the access road before the 3rd defendant bought plot 9 was not made party to this suit. 20

All in all, the available evidence against the KCCA was based on its negligence, having failed to cover the open drainage channel and maintain it. Over the years it became a health hazard to the community.

25 General damages.

It is trite law that damages are the direct probable consequences of the act complained of such loss of use, loss of profit, physical inconveniences, mental distress, pain and suffering. (Kampalga District Land Board Vs Venons Babuegana Civil Appeal No. 2 of 2007)

30 Given all the inconveniences and unquantifiable damages suffered by the plaintiff due to the KCCA's failure to maintain the drainage, the area became a dumping ground for rubbish and filth, making it also a breeding ground for mosquitoes and a health hazard not only to the plaintiff who was directly affected as the owner of the plot but also the entire community in that area.

In addition, the drainage channel is wide and open, which makes it dangerous and susceptible to abuse by wrong elements in the community. The plaintiff's prayer for general damages was therefore justified.

Accordingly,

- $\$S$ The following are the orders of court:
- 1. An order issues for KCCA to cover the open drainage within a period of six months from the date of delivery of this ruling and to direct KCCA to carry out periodical maintenance of the drainage channel.
- 10 2. An award of Ugx 50,000,000/= as damages is made to the plaintiff as general damages payable by KCCA on account of its failure to carry out its duties, which amount shall attract interest of 15%, payable from the date of delivery of this judgment until payment is made in full.
- 15 3. Costs of the suit shall be paid to the plaintiff by KCCA.
- 4. The plaintiff to meet costs of the $\$3^{\text{rd}}$ defendant.

Alexandra Nkonge Rugadya

20 Judge

14th June, 2022

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2022/124/eng@2022-06-14>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/byoleko-represented-by-his-personal-representative-edward-kanyarusoke-v-kampala-capital-city-authority-civil-suit-no-128-of-2016-2022-ughcld-124-14-ju--6a3ea4dc3b1caa91297e8e84>

Prepared on 14 October 2026 · Esheria