

UGANDA / JUDGMENT

Eng.Opwonya & 22 ors & Attorney General (Civil Appeal No. 72 of 2005) [2020] UGCA 94 (25 June 2020) [2020] UGCA 94

COURT

Court of Appeal of Uganda

BEFORE

Kakuru, JA, Madrama, JA, Kiryabwire, JA

CASE / FILE NUMBER

Civil Appeal No. 72 of 2005

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 72 OF 2015

- 1. ENG NOAH OPWONYA
- 2. DICK NYERO
- 3. LATIGO JACKSON
- 4. LEVI OLAL
- 5. OPIO PIUS
- 6. J. K NYEKO
- 7. HANNINGTON OPIRA
- 8. LUKE OWIRO
- 9. REV. OLOBO CEASAR
- 10. OPENY VINCENT
- 11. MORISE LANGOL
- 12. PAUL MOGI
- 13. ISAAC OPOBO

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 72 OF 2015

ENG NOAH OPWONYA AND ORS===== APPELLANT

VERSUS

ATTORNEY GENERAL=====

(CORAM: KAKURU, KIRYABWIRE, MADRAMA)

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the draft Judgment of my Brother Hon. Mr. Justice Christopher Madrama, JA in draft and I agree with the findings and final decisions and orders and have nothing more useful to add.

\$25\$ th June 2020.

Dated at Kampala this.....

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA.

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 72 OF 2015

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

- 1. ENG NOAH OPWONYA}
- 2. DICK NYERO \$10\$
- 3. LATIGO JACKSON}
- 4. LEVI OLAL \$\}\$
- 5. OPIO PIUS}
- 6. J. K NYEKO}

- \$15\$ 7. HANNINGTON OPIRA
- 8. LUKE OWIRO}
- 9. REV. OLOBO CEASAR}
- **OPENY VINCENT}** \$10.\$
- \$\$
- \$\$
- 13. ISAAC OPOBO}
- 14. **BEATRICE ACIRO**
- \$\$
- \$\$ **CELESTINO YAIRO ODONG**
- \$\$ **PENDIRIKO ONGWECH**
- \$\$ **ALDO ABWOLA**
- \$\$ **HILLARY OWINY**
- \$\$ **JAKY OLANYA**
- \$21. \qqquad \text{AUMA LUPEO}\$
- \$\$ **BONIFES YORUM OPIO**
- \$\$ **ZAK OKENY}**

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(On Behalf of the Plaintiffs in Civil Suit {5} No 38 of 2006 and those they represent and Acholi War Debt Claimants Association}APPELLANTS
VERSUS

ATTORNEY GENERAL}

.....
(Appeal from the Ruling and Orders of the High Court of Uganda at Gulu {10} (the Hon. Mr. Justice John Eudes Keitirima) delivered at Gulu on 6th February, 2015 vide Miscellaneous Application No 27 of 2014 Arising from H. C. C. S. No 38 of 2006)

JUDGMENT OF CHRISTOPHER MADRAMA

This appeal arises from the ruling and directives of Keitirima J dated 6th {15} February 2015 in which he gave several directions to the parties. The applicants had applied for a declaration that the verification of the claims of the applicants/plaintiffs and those they represent in Gulu Civil Suit Number 38 of 2006 be declared complete. Secondly, the court adopts the verification report compiled by the applicants dated 3rd March, 2014 and annexed to the {20} application. Thirdly, that the applicants and those they represent in Civil Suit No 38 of 2006 be paid compensation of 766,841 herds of cattle, 165,348 goats, 122,264 sheep and the 8732 pigs pursuant to and arising out of the verification of the claims of the plaintiffs and those they represent. Fourthly, for the respondent to pay compensation for the verified payments in {25} accordance with the values of livestock as determined by the District Veterinary Officer, Gulu. Fifthly, for the High Court to proceed to award general damages to the applicants and those they represent. Sixthly, for an order that costs in Civil Suit No 38 of 2006 be taxed and payment thereof

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made. Lastly, the applicants prayed for costs of the application to be {5} provided for.

The background to the application as stipulated in the ruling of the learned trial judge was that the applicants had filed the High Court Civil Suit No 38 of 2006 for inter alia recovery of compensation for livestock and other properties. On 11th September, 2008, a judgment was recorded by consent of the parties.

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The essence of the settlement was that the Government of Uganda agreed to pay the claimants. The claim of the plaintiffs related to livestock and properties that were lost in the Acholi region during the northern Uganda war/conflict. It was averred that the settlement and consent judgment was {15} subject to a number of things that had to be done by the respective parties to

the suit such as verification of individual claims and fixing the monetary value of livestock. The verification exercise was to be completed by 24th of November 2008. However, it was alleged that the respondent did not provide

- the necessary funds to carry out the verification and therefore the verification \$20\$ was not completed until January 2013. Following the completed verification exercise, the applicants compiled the verification data and are accordingly entitled to final decision on compensation and implementation of the judgment. The applicants further averred that there was a need for the court
- to award general damages. They stated that it was in the interest of justice \$25\$ that the application is granted as the applicants waited since 2008 and cannot be paid under the judgment unless the application is granted. The judgment stipulated that in the case of any matter regarding the execution of the settlement, a party or parties to the suit shall be at liberty to apply to court for directions or decision and the court shall give the necessary
- 30 direction or decision. It was further indicated that the veterinary officer had given the current value of livestock in the Acholi region. Last but not least it

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is averred that the conditions stipulated in the consent Judgment had been \$\mathsf{S}\$ fulfilled and it was just and proper that the orders sought be granted.

The Attorney General opposed the application and indicated **inter alia** that the verification would be completed within 30 days and those whose files were already with the Attorney General's Chambers shall be paid. Verification of the rest of the claims shall be completed before the next hearing date. They agreed that the sum to be used as the value of the livestock shall be assessed by the district veterinary officer or any other institution of government. Several other points were made about the way forward that I do not need to go into.

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The court noted that there could be some leadership wrangles among the \$15\$ plaintiffs or interested parties and that the consent judgment among other things had provided that the court be furnished by the parties with periodic reports as to the execution of the settlement so as to enable the court supervise and ensure smooth execution to completion. It was indicated that the government had received so far Uganda shillings 7.1 billion to be paid to \$20\$ the claimants. However, when the money was released, court was never furnished with a report on how the said amount was appropriated.

Using the inherent powers of the court under section 98 of the Civil Procedure Act, the learned trial judge ruled that it was important to ensure that the beneficiaries of the consent Judgment reap from the benefits of the \$25\$ judgment without any further impediment. To ensure that the ends of justice are met and to avoid abuse of court process, the learned trial judge issued the following directions.

1. The former plaintiff's (Nobert Adyera and group) and applicants (Noah Opwonya and group) in this case and their advocates should be brought on board by the defendant/respondent with the verification

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exercise with the purpose of harmonising the same. This is because these are the claimants who know the history of the case and also have benefited from the releases from government for compensation. The case had become bigger than what had initially been intended as the claimants were now 23,000 people well over and above the initial 1700 former plaintiffs who had been represented through a representative order.

- 2. Money already dispersed for compensating the claimants (7.1 billion shillings (should be properly accounted for to avoid double payment and for transparency purposes.
- 3. The district leaders to wit, RDC's, LCV Chairmen, MP's and the Chief Administrative Officers of the districts where the claimants hail from should be involved in the said exercise to ensure transparency.
- 4. The convener of the verification and validation committee should be the Minister of Justice and Constitutional Affairs or any person he delegates for the purpose and agreed upon by the parties. The respondent cannot go it alone since it is a party to the suit. Considering the magnitude of this case the said Minister is better placed to bring the said sites together for harmonisation of the said exercise that has taken so long.
- 5. In the spirit of the consent judgment, the general damages and costs should be agreed upon by the same parties, failure for which they will be determined by the court.
- 6. Whatever amounts agreed upon for compensation, they should be directly disbursed to the claimant's personal accounts.
- 7. The office of the Auditor General should be approached for guidance as the matter involves taxpayer's money.
- 8. The process should be completed before the next financial year but in any case, not later than \$30th of June 2015.

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- The applicants were aggrieved by the directions issued by the learned trial S judge and appealed to this court on 5 grounds of appeal namely:
 1. The learned judge erred in law and in fact in holding that the applicant should never have brought the application.
 2. The learned trial judge erred in law and in fact in ordering the former plaintiffs, Nobert Advera and group, should be involved in the application and/or verification of the claims of the applicants/plaintiffs.
 3. The learned judge erred in law and in fact in ordering the district leaders, RDC's, LCV chairpersons and Chief Administrative Officers should be involved in the application.
 4. The learned judge erred in law and in fact in giving orders that were not sought in the application.
 5. The learned judge erred in law and in fact in not granting the orders sought in the application.

When the appeal came for hearing, the appellants were represented by learned counsel Mr. Idoot Augustine while the respondent was represented \$20\$ by the learned that Senior State Attorney Mr. Hilary Ebila Megan holding brief for Philip Mwaka Principal State Attorney.

We pointed out that the appeal in question arises from a consent judgment which was still not finally concluded and the question was whether this court has jurisdiction to entertain the appeal.

RESOLUTION OF APPEAL

I have carefully considered the question of jurisdiction. The consent judgment in issue was recorded on 11th of September 2008 before Honourable Justice Remmy Kasule, judge of the High Court as he then was at the High Court holden in Gulu wherein the court recorded as follows:

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\$10 By consent of the parties to the suit as represented by their respective counsel in court, a settlement is recorded in the suit in the following terms:

- 1. The Government of Uganda has agreed to settle the case and pay the plaintiffs and those they represent for those claims as stated in the pleadings of the suit.
- 2. The parties to the suit shall take time to verify the individual claims so that they are paid.
- 3. For those claims of the plaintiffs whose files are already with the Attorney General's Chambers verification shall be completed within 30 days from the date of the settlement and payment in the comments before the next mentioned date of this suit
- 4. Verification of the rest of the claims, other than those in (3) above, shall be completed before the next mentioned date of the suit in court and payment shall commence in or before January 2009.
- 5. Compensation for the rest of the claims of the plaintiffs, other than livestock shall either be agreed on all proved in court.
- 6. The sum to be used as the value of livestock shall be assessed by the district veterinary officer, Gulu district, and in case of any dispute as to valuation the services of Gulu University, and/or any other government institution/department shall be used.
- 7. The parties to the suit shall agree on the amount of general damages, failing which court shall make a decision.
- 8. The court shall be furnished by the parties to the suit, with periodic reports as to the execution of the settlement so as to enable court supervise and ensure its smooth execution to completion, and in case of any matter regarding the execution of the settlement, a party or parties to the suit, shall be at liberty to apply to court for direction and/or decision and the court shall give the necessary direction/decision.

Donge for the plaintiffs: I agree to the above terms of settlement.

Matsiko also for plaintiffs: I agree to the above terms of settlement.

Cox Joel Ojuku for the defendant. I agree to the above terms of settlement.

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Court: In order to keep track order execution of the recorded settlement the cases $\$S$ fixed for mention on 24th of November 2008 9 AM. Costs for today to be in the cause.

It is clear from the consent judgment and the remarks of the learned trial judge that the consent judgment was imperfect because of the verification exercise which was supposed to be carried out. The suit was represented as having been settled on certain terms. The implementation of the terms however hit some snags hence several applications are made to deal with the

The jurisdiction of the Court of Appeal is set out by section 10 of the Judicature Act Cap 13 laws of Uganda 2000 which provides that:

ramifications of the settlement inclusive of tracking progress.

10. Jurisdiction of the Court of Appeal.

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An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law.

Furthermore, the Constitution provides that the jurisdiction of the Court of Appeal is to hear appeals from the High Court as prescribed by the law. \$20\$ Article 134 of the Constitution of the Republic of Uganda provides as follows:

134. Court of Appeal of Uganda.

(1) The Court of Appeal of Uganda shall consist of—

- (a) the Deputy Chief Justice; and
- (b) such number of justices of Appeal not being less than seven as Parliament may \$25\$ by law prescribe.

(2) An appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law.

The law is that a consent judgment is not appealable. Section 67 (2) of the Civil Procedure Act expressly provides that no appeal shall lie from a decree 30 Decision of Hon, Mr. Justice Chiristopher Madrama Izama Tunghlly maximum 735% curityx 2020 style MINING ONT OF APPEAL Opikolení

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passed by the court with the consent of the parties. Section 67 of the Civil Procedure Act provides as follows:

67. Appeal from ex parte decree, etc.

(1) An appeal may lie from an original decree passed ex parte.

(2) No appeal shall lie from a decree passed by the court with the consent of parties.

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Where an appeal does not lie from a decree passed by the court with the consent of the parties, it cannot lie from the terms of the agreement or the consent. In the circumstances of this appeal, there was an agreement of the parties recorded by the learned trial judge. However, the terms of the agreement required the action from the parties to implement the agreement and perhaps to come up with a final decree. The consent agreement was indeterminate in that the amount of compensation was unknown. Further agreement was supposed to be reached by the parties upon valuation of livestock and a verification exercise to deal with individual claims. Additional

proceedings took place before the High Court in an attempt to execute or \$20\$ implement the terms of the consent. An agreement is not appealable and can only be set aside or varied by the parties thereto. The grounds for setting aside a consent judgment were set out by the East African court of appeal decision in **Hirani v Kassam 19 (EACA) 131**. This decision was cited by Law

Ag. P in *Brooke Bond (T) Ltd v Marlya* [1975] E. A. 266 at page 269: \$25\$

> the circumstances in which a consent judgment may be interfered with were considered by this court in *Hirani v. Kassam (EACA)*, 19 E. A. C. A. 131, where the following passage from Seton of judgments and orders, 7th Edition vol 1 page 124 was approved.

Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them...and cannot be varied or discharged unless obtained by fraud

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or collusion, or by an agreement contrary to the policy of court... or if consent was given without sufficient material facts, or in misapprehension or ignorance of material facts, or in general for any reason which would enable court to set aside an agreement between the parties

A consent judgment or order cannot be set aside except on grounds that would invalidate an agreement between the parties. In **Purcell v F C Trigell \$10\$ Ltd** (trading as Southern Window and General Cleaning Co) and another [1970] 3 All ER 671 the parties entered into an interlocutory consent order and Lord Denning of the Court of Appeal of England considered the effect of the order at 675:

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- But there is no ground here so far as I can see setting aside this consent order. It 15 was deliberately made, with full knowledge, with the full agreement of the solicitors on both sides. It cannot be set aside. But even though the order cannot be set aside, there is still a question whether it should be enforced.
- The contractual effect of a Consent Judgment on the parties who executed it \$20\$ was considered by Buckley LJ in **Purcell v F C Trigell Ltd** (supra) at page 677 when he held:

In my judgment, this order should be regarded as having a binding contractual effect on which the plaintiff was perfectly entitled to insist. \$25\$

Secondly, a consent judgment operates as estoppels against someone trying to assert a different position from that stipulated in the agreement of the parties as held by Lindley L. J. in **Huddersfield Banking Co. Ltd v Henry Lister & Son Ltd** (1895) 2 Ch D 273 at page 280:

A Consent Order I agree is an order and so long as it stands it must be treated as such, and so long as it stands it is as good an estoppel as any other order.

In the premises anybody trying to assert a different position from the consent 35 is barred by the doctrine of estoppels from challenging the consent. By the same token, a consent decree is not appealable because it is what the parties

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agreed and therefore the person trying to assert a different position is barred $\$S$ by the doctrine of estoppels from appealing against the consent. Thirdly, where the terms of the agreement are not be applied as intended, the remedy of the aggrieved party is to apply to the court to seek to vary the terms of the consent on the grounds on which an agreement between the parties may be varied. \$10\$

There are other problems with the appeal as framed. It is contended **inter alia** that there are other parties to the suit who were not in the original plaintiffs. In other words, the parties have gone beyond the scope of their own pleadings to deal comprehensively with claims of the general population. While this may proceed with the consent of the parties, it cannot be the subject of an appeal. A decision of the court must arise from the pleadings and the issues raised in those pleadings.

Issues arise from pleadings as stipulated by Order 15 rules 1 of the Civil Procedure Rules and the materials from which issues may be framed is specified by Order 15 rules 3 of the Civil Procedure Rules. Order 15 rule 3 of the Civil Procedure Rules provides as follows:

3. Materials from which issues may be framed.

The court may frame the issues from all or any of the following materials—

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and
- (c) the contents of documents produced by either party.

Issues are framed from allegations on oath by the parties or from the pleadings and answers to interrogatories delivered in the suit. They may also 30

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be framed from the contents of documents of either party. Issues are framed $\overline{\$5}$ where the matter proceeds adversarial the and not by consent of the parties.

The judgment requires each issue to be resolved. Order 21 rules 4 and 5 of the Civil Procedure Rules provide that:

4. Contents of judgment.

- Judgments in defended suits shall contain a concise statement of the case, the \$10\$ points for determination, the decision on the case and the reasons for the decision.
- 5. Court to state its decision on each issue.
- In suits in which issues have been framed, the court shall state its finding or \$15\$ decision, with the reasons for the finding or decision, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Firstly, there were no issues framed and determined at the High Court since the matter was settled by consent before hearing and the suit was never $\overline{\$20}$ heard.

Secondly, it follows that there was no decision on each issue arising from the pleadings of the parties or materials from which an issue can be framed for determination.

As I noted above, the implementation of the terms of the consent judgment \$25\$ cannot be the subject of an appeal since this is not a matter arising in execution of a decree.

In the premises, this court does not have any jurisdiction to entertain an appeal from an indeterminate settlement between the parties.

