

UGANDA / JUDGMENT

Muhwezi v Uganda National Roads Authority (Civil Suit 86 of 2022)

[2023] UGHC 142 (3 November 2023)

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COURT
High Court of Uganda

BEFORE
Byaruhanga Rugyema, J

CASE / FILE NUMBER
Civil Suit 86 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT HOIMA CIVIL
SUIT NO. 86 OF 2022 (Formerly MSD Civil Suit No. 63 of 2022)

ASTONE MUHWEZI:.....PLAINTIFF

VERSUS

UGANDA NATIONAL ROADS AUTHORITY:.....DEFENDANT

Before: Hon. Mr. Justice Byaruhanga Jesse Rugyema

JUDGMENT

Background:

- [1] The Plaintiff sued the Defendant for recovery of UGX 312,000,000/= (**Three Hundred and Twelve Million Shillings only**) being compensation for his land comprised in **FRV MAS 108 Folio 20 Block 2 Plot 295** measuring approximately 1.2670 hectares expropriated by the Defendant to construct Hohwa Nyairongo-Kyarushesha road, general damages, interest and costs. The Plaintiff's claim is for recovery of compensation for his land affected by the construction of **Hohwa Nyairongo-Kyarushesha road construction project** at Kyarushesha Trading Centre, Kyangwali Sub County, Kikuube District which was not paid by the Defendant as required by the law under compulsory acquisition of land.

- [2] The Plaintiff asserted that his land was earmarked and assessed by the Defendant under the expropriation of land for the road reserve/expansion of the road to the tune of **UGX 60,521,500/= (Sixty Million Five hundred Twenty One thousand Five hundred Shillings only)**. That he was not satisfied with the Defendant's assessment of his land and has on several occasions appealed and/or demanded the Defendant to re-assess his affected land and fairly compensate him

accordingly but in vain (**P. Exhs. 3-5**). The Plaintiff was instead encountered by negative responses from the Defendant's officials referring him to the Chief Government Valuer (**P. Exhs. 6-7**).

- [3] The Plaintiff contended that he was surprised when the Defendant proceeded with construction works on his land without prior adequate compensation for his land affected by the road works. That to date, he has not been paid his due compensation sum. Instead, the Defendant's officials approached the Plaintiff about access and acquisition of his land for road construction purposes, pending compensation, which the plaintiff accepted (**P. Exh. 6**). Thereafter he waited for payment to no avail and is now suspicious of the intentions of the Defendant regarding his property which are not transparent and/or straightforward.
- [4] The Plaintiff asserted further that his property was acquired by the Defendant for purposes of the road construction project of **Hohwa Nyairongo-Kyarushesha road** and is valued at **UGX 312,000,000/= (Three Hundred and Twelve Million Shillings only)** as assessed by the District valuer, Kikuube District (**P. Exh. 7**). It is this sum that he demands should be paid by the Defendant as the fair compensation due for his land
- [5] In its WSD, the Defendant averred that it is mandated under the law to compulsorily acquire land for purposes of construction of public roads. In acquiring the land, the Defendant is guided by the law on compulsory land acquisition. That the acquisition of land for purposes of the suit road was premised on the rates approved by the Chief Government Valuer for the area in which the land is situate. The Defendant contended that although the plaintiff had a right to challenge the assessment of the land acquired for the project, the challenge has to be done in accordance with the law on compulsory Land Acquisition and within the timeframe provided for under the law.
- [6] It was also the Defendant's contention that the suit land is also adversely claimed by a one **Afaayo Efraim**, a fact the Defendant established during the process of acquisition. The Defendant has severally communicated this fact to the Plaintiff. That the Defendant

took possession of the portion of land after it was granted express consent. The Defendant prayed for dismissal of the suit with costs.

- [7] When this matter came up for hearing on May 10, 2023, **Mr. Kasangaki Simon** appeared for the Plaintiff while **Mr. Nahamya Bruce** appeared holding brief for **Mr. Muhangi Henry** for the Defendant. Court issued direction to parties to file a Joint Scheduling Memorandum and their respective witness statements by **June 12, 2023**. The Plaintiff filed his witness statement on **24.4.2023**. The Defendant did not file any. In such circumstances, court deems that the Defendant elected not to offer evidence.
- [8] On **26th September 2023**, the Plaintiff and his counsel were in court while the Defendant was absent. The matter was adjourned for hearing on the **30th day of October 2023**. A hearing notice for **30th October 2023** at 10 am was extracted and served on the Defendant on **13th October 2023** and duly acknowledged. A return of service was filed in this court on **16th October 2023**. Satisfied with this effective service of court process on the Defendant, court granted leave to the Plaintiff to lead his evidence ex parte.
- [9] In the scheduling memorandum filed by the Plaintiff, the following issues were framed for trial
 - 1) **Whether the Defendant compulsorily acquired the Plaintiff's land.**
 - 2) **Whether the Plaintiff is entitled to compensation by the Defendant for the compulsorily acquired.**
 - 3) **What remedies are available to the parties.**

The above issues appear inter-related and as a result, this court has addressed and resolved them jointly.

[10] Burden and standard of proof.

Section 101 of the Evidence Act, Cap 6 imposes the burden of proof on the person alleging a set of facts. It is trite law that the burden of proof in civil matters is on the Plaintiff to prove his/her case on a balance of probability. The standard of proof in civil cases as already noted and such as this case, is on a balance of probability, See **Muller vs. Minister of Pensions**, [1947] 2 ALL E. R. 372 and **Lugazi Progressive School & Anor. Vs. Serunjogi & Ors** [2001-2005] 2 HCB 12.

[11] **Article 26(2) of the Constitution of the Republic of Uganda** states:

"No person shall be compulsorily deprived of property... except where the following conditions are satisfied:

- *a) the taking of possession or acquisition is necessary for public interest or in the interest of the defence, public safety, public order, public morality or public health; and*
- *b) Where the compulsory taking of possession or acquisition of property is made under a law which makes provision for*

- i. *Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and*
- ii. *A right of access to a Court of law by any person who has an interest or right over the property.*
- [12] In the case of **Advocates for natural resources governance and Development & 2 others v AG & Another CCCP No. 40 of 2013**, it was held that any act or provision of the law that makes no provision for prior payment of compensation before government compulsorily acquires or takes possession of anyone's property contravenes **Article 26 (2) of the 1995 constitution** and is illegal. The Constitution also provides for prior payment of compensation before taking possession or acquisition of any land. **Article 26 (b) (i) (supra)** provides thus:

"Prompt payment of fair and adequate compensation; prior to the taking of or acquisition of property."

See also **UNRA Vs Irumba Asumani & Anor, SCCA No. 2 of 2014**.

[13] First of all, the Defendant does not contest the fact that it compulsorily acquired the Plaintiff's land in issue or that the Plaintiff is a Project

Affected person entitled to compensation for his land affected by the Defendant's road project. The issue seems to stem from the amount of compensation payable since the Plaintiff rejected the first amount for compensation assessed for his land by the Defendant. The Defendant received the Plaintiff's appeal for re-assessment and promised to undertake a re-assessment through the Office of the Chief Government Valuer. When this process delayed and/or did not happen, yet the defendant took over the land for the project, the Plaintiff approached the District Valuer Kikuube who made a valuation for him consequent to which he filed this suit to recover the sum of UGX 312,000,000/= (**Three Hundred and Twelve Million Shillings only**) disclosed to him in the valuation report (P. Exh. 8)

- [14] The Plaintiff in his witness statement led evidence that he is the owner of land measuring **approximately 2.29 acres located at Kyarushesha Trading Centre, Kyangwali Sub County, Kikuube District** which was affected by the construction of Hohwa Nyairongo-Kyarushesha road project (P. Exh.2). His land was earmarked and assessed by the Defendant under the expropriation of land for the road reserve/expansion of the road to the tune of **UGX 60,521,500/= (Sixty Million Five hundred Twenty One thousand Five hundred Shillings only)**. That he was dissatisfied with the Defendant's assessment of his land and has on several occasions, petitioned and demanded the Defendant to re-assess his affected land and compensate him accordingly but in vain. The plaintiff's dissatisfaction and rejection of the assessment of his land at Ugx 60,521,500/= is based on the fact that on the same piece of land, a plot of 50ft x 100ft goes for 8m -10million shillings for non-titled land and therefore an acre should fetch about 160m – 200million shillings. The land in question is commercial and in a Town Board (P. Exh.3). It would appear to me that in the circumstances, the

plaintiff's rejection of the offered sum is justifiable.

- [15] The Plaintiff stated that he encountered negative responses from the Defendant's officials referring him to the Chief Government Valuer and the Defendant instead, resorted to selective assessment, valuation and compensation of some individuals for land and developments excluding him. The Defendant's officials instead approached the Plaintiff about access and acquisition of his land for road construction purposes pending

compensation which he accepted, but, he is now suspicious of the intentions of the Defendant regarding his property which are not transparent and/or straightforward. To date he has not been compensated for his land without any lawful justification.

- [16] It was also the Plaintiff's evidence that his property was acquired by the Defendant for purposes of road, construction project of Hohwa Nyairongo-Kyarushesha road, with a correct valuation of UGX 312,000,000/= (**Three Hundred and Twelve Million Shillings only**) and therefore he seeks an order for recovery of the same (**P. Exh 8**). The Plaintiff further averred and led evidence to prove that the Defendant's conduct as herein above portrayed is wrongful, amounts to wrongful interference with his land thus entitling him to compensation at the prevailing market value for his property, general damages in the sum of UGX 150,000,000/= (**one hundred and fifty million Shillings only**), interest and costs of the suit.
- [17] The Defendant admits the Plaintiff's claim a part from the amount of compensation. This court finds no justifiable reason why the Plaintiff's land which was expropriated by the Defendant has not been paid for. The Defendant's claim or allegation that the suit land is adversely claimed by a one **Afaayo Efraim** was not proved since no evidence was led to establish the same. This allegation in the view of this court does not pass for a defence or excuse for non-payment of the compensation due to the Plaintiff herein or would have made a relevant application to have him added as a party so that all the matters in controversy are heard and finally determined.
- [18] In the premises, this court finds that the Plaintiff is entitled to prior adequate compensation from the Defendant before it can acquire his land for the construction of **Hohwa Nyairongo-Kyarushesha road**. It was a violation of the Plaintiff's right to property for the Defendant to start construction works on the suit land before paying him prior adequate compensation. The Plaintiff rejected the Defendant's assessment for his land and appealed for re-assessment. The Defendant received the Plaintiff's appeal and undertook to handle it through the Office of the Chief Government Valuer. There is no evidence that a re-assessment was done. The Plaintiff through the

District Valuer Kikuube valued the suit land at UGX 312,000,000/= (**Three Hundred and Twelve Million Shillings only**) (Exh. P 8). There is no contrary report by the Defendant or objection to the Plaintiff's valuation of his land on record since a copy of the report was attached to the pleadings but the defendant is silent on the same. I would therefore agree with and pass the valuation report of the District Valuer Kikuube of the suit land as the correct market value for the land and award the same to the Plaintiff.

- [19] In conclusion, the Plaintiff's claim succeeds and Judgment is entered for the Plaintiff in the following terms
- a) A declaration that the Defendant interfered with the Plaintiff's land at **Kyarushesha village, Kyangwali Sub County, Kikuube District** and it has without adequate compensation, compulsorily acquired it for purposes of construction of the **Hohwa Nyairongo-Kyarushesha road**.
- b) An order doth issue directing the Defendant to pay compensation to the plaintiff the value of his land amounting to UGX 312,000,000/= (**Three Hundred and Twelve Million Shillings only**).
- c) General damages of UGX 150,000,000/= (**one hundred and fifty million Uganda Shillings only**) sought by the plaintiff appear to be on the higher side. Considering the inconvenience, stress and trauma of losing land the plaintiff has suffered, I ward him Ugx 85,000,000/= as appropriate general damages.
- d) Costs of the suit are awarded to the Plaintiff as the successful party (**S.27 CPA**).
- e) Interest at 20% P.a on (b) from the date of filing the suit and on (c) from the date of judgment till payment in full (**S.26 CPA**).

Dated at Hoima this 3rd day of November 2023.

Byaruhanga Jesse Rugyema JUDGE

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