

UGANDA / JUDGMENT

Mwebeiha v Attorney General

(Miscellaneous Application No. 822 of 2015) [2015] UGHCLD 49 (15 October 2015)

[2015] UGHCLD 49

COURT

HC: Land Division (Uganda)

BEFORE

Bashaija, J

CASE / FILE NUMBER

Miscellaneous Application No. 822 of 2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 822 OF 2015

(ARISING FROM CIVIL SUIT NO. 382 OF 2015)

MWEBEIIHA AMATOS ::::::::::: APPLICANT/PLAINTIFF

VERSUS

ATTORNEY GENERAL ::::::::::: RESPONDENT/DEFENDANT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

MWEBEIIHA AMATOS *(hereinafter referred to as the “Applicant”)* brought this application under *Section 33 of the Judicature Act (Cap.13); Section 98 of the Civil Procedure Act (Cap 71); and Order 13 rule 6 of the Civil Procedure Rules, (S.171-1)* seeking the following orders;

1. *That judgment be entered on admission in favour of the Applicant/Plaintiff in HCCS No. 382 of 2015 in the terms that the Plaintiff is entitled to compensation for land comprised in Busiro Block 351, Plot Nos. 49,309,353,356,357,358,364,404,598 and 600 land at Buddo.*
2. *That judgment on admission be entered that the Plaintiff be paid the sum of UGX 9,219,240,000/= [Nine billion, two hundred and nineteen million, two hundred and forty thousand shillings only] as compensation.*

3. ***That payments of the monies be made through the Applicant's/Plaintiff's Lawyers M/s Bashasha & Co. Advocates.***
4. ***That costs of this application be provided for.***

The grounds of the application briefly are as follows:-

1. ***That the Plaintiff filed HCCS No. 382 of 2015 seeking for, inter alia, compensation for land comprised in Busiro Block 351, Plot Nos. 49,309,353,356,357,358.364,404,598 and 600, land situated at Buddo.***
2. ***That the Defendant has unequivocally admitted that the Applicant/Plaintiff is entitled to compensation for the said land.***
3. ***That the Defendant through its agents has valued and ascertained and unequivocally admitted the value of the land due for compensation but the same has not been paid to the Plaintiff.***
4. ***That is just and equitable that this application be granted and all issues involved in the suit be settled to their finality.***

The grounds of the application are amplified in the affidavit in support of the motion sworn by Mwebeiha Amatos, the Applicant herein, in which he depones as follows;

1. ***That I am a male adult Ugandan of sound mind, the Applicant herein, well versed with the facts in this matter and with capacity to depone to this affidavit.***
2. ***That I am the lawful owner and registered proprietor of land comprised in Busiro Block 351 Plot Nos. Nos. 49, 309, 353, 356, 357, 358, 364, 404, 598, and 600, land at Buddo.***
3. ***That the Defendant's agents trespassed and have continued to trespass on the above described land and caused settlement of numerous occupants of the above mentioned land. A copy of the plaint is hereto attached and marked Annexure "A".***
4. ***That I filed a suit vide HCCS No. 382 of 2015 to seek redress from this Honourable Court seeking for, inter alia, for compensation of the above mentioned land. A copy of the plaint is hereto attached and marked Annexure "A".***
5. ***That the Defendant filed a written statement of dense and in paragraph 6 thereof unequivocally admitted that the Applicant/Plaintiff is entitled to payment of compensation for the suit land. A copy of the written statement of defence is hereto attached and marked Annexure "B".***
6. ***That the Respondent through Government agencies has at all times unequivocally admitted that the Plaintiff/Applicant is entitled to payment of compensation but to date no payment has been done. Copies of various correspondences to that effect are hereto attached and marked Annexures "C1", "C2", "C3", C4", "C5", "C6" respectively.***

7. *That Ministry of Lands, Housing and Urban Development dully valued and ascertained the value due for compensation but no payment was done. "A Copy of the Report to that effect is hereto attaché and marked Annexure "D".*
8. *That I am advised by my lawyers M/s Bashasha & Co. Advocates that the contents of the written statement of defense and the various correspondences attached hereto amount to an unequivocal admission and entitles me to judgment on admission.*
9. *That I am further advised by my said lawyers that this Honourable Court has jurisdiction to enter judgment on admission at this stage and set down the remaining issues for hearing and determination.*
10. *That he Respondent/Defendant has continued to deprive me of my constitutional right to property and caused me gross financial loss.*
11. *That it is in the interest of justice that judgment on admission be entered for payment of compensation and the remaining issues be set down for hearing.*
12. *That I swear this affidavit in support of this application herein.*
13. *That whatever I have stated herein is true and correct to the best of my knowledge and belief save information whose source is herein disclosed.*

The Attorney General *(hereinafter referred to as the "Respondent")* opposed the application and filed an affidavit in reply sworn by Mr. Oburu Jummy Odoi, a Principal State Attorney in the Directorate of Civil Litigation, in the Respondent's Chambers, and he states as follows;

1. *That I have read and understood the contents of Miscellaneous Application No. 822 of 2015 and the evidence contained in the supporting affidavit of Mr. Mweheha Amatos and I depose this affidavit in opposition to the orders being sought from this Honourable Court.*
2. *That I know that the Respondent/Defendant did not unequivocally admit in his Written Statement of Defence that its agents have trespassed and/or even continued to trespass on the Applicant/Plaintiff's land comprised in Busiro Block 351 Plot Nos. 49, 309, 353, 356, 357, 358, 364, 404, 598, and 600, land at Buddo so as to entitle the Applicant to claim compensation thereof.*
3. *That I know that the Defendant rather noted that the Plaintiff had not named the alleged agents of Government who have continued to trespass on the suit land in order to invoke vicarious liability towards Government.*
4. *That I know that the Respondent did inspect the suit land with a view of asserting the likely by way of establishing the open market value of the suit land.*

5. ***That I know that there have been numerous internal consultations amongst various Government agencies on the above subject matter. A copy of our letter requesting for detailed information of the steps taken so far towards resolution of this matter and the most recent response thereto are hereto attached and marked anenxtures “A” and “B”.***
6. ***That I know that the contents and averment made in the Written Statement of Defence do not amount to grounds for granting a judgment on admission.***
7. ***That I know that it is not in the interest of justice to grant judgment on admission when the matte is yet to be heard on its merits on this court.***
8. ***That I swear this affidavit in opposition to the grant of judgment on admission against the Respondent /Defendant.***
9. ***That whatever is stated herein is true and correct to the best of my knowledge.***

At the hearing of the application, the Applicant was represented by Mr. Abraham Mpumwire of *M/s Bashaha & Co. Advocates,* while the Respondent was represented by Mr. Geoffrey Madette a State Attorney in the Respondent’s Chambers. Both Counsel made oral submissions to argue the application and supplied court with authorities. I thank them for that. I have taken into account the submissions in arriving at the decision in this application. The issues arising from the facts of the application are as follows;

1. ***Whether there are admissions of facts by the Respondent to warrant the issuance of a judgment on admission.***
2. ***Whether the Applicant is entitled to the orders sought.***
3. ***Who is entitled to costs of this application?***

Resolution of the issues:

Issue No.1: Whether there are admissions of facts by the Respondent to warrant the issuance of a judgment on admission.

The procedure of entering judgment on admission is governed by ***Order 13 r.6*** of the ***Civil Procedure Rules (supra)*** which provides as follows;

“*Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of the other questions between the parties; and the court may upon application make such order, or give such judgment, as the court may think just.” [Emphasis mine].*

These provisions have been amply expounded upon in various authoritative cases. See: ***Agricultural Finance Corporation vs. Kenya National Insurance Corporation, Civil Appeal No. 271 of 1996***; ***Pan African Insurance Co vs. Uganda Airlines [1985] HCB 53.*** In particular, the Court of Appeal of Uganda in the case of ***Kibalama vs. Alfasan Belgle [2004] EA 146*** held that;

“Under Order 11 r.6 (now O.13 r.6) judgment can be entered at any stage of the suit where an admission of facts has been made. Such an admission, however, must be unequivocal in order to entitle the party to judgment of any other questions between the parties.”

Similarly in the case of **Matovu Luke & Or’s vs. Attorney General, HC Misc. Appl. No. 143 of 2003* *, Musoke – Kibuuka J, citing **Phipson on Evidence, Chapter 24,** stated that in civil cases, statements made out of court by a party to the proceedings or by persons connected with him by any relationship are admissible in evidence against but not in favour of such party. Admissions are admissible against the crown as against ordinary parties. It is generally immaterial to whom the admission was made. An admission made to a stranger to the suit is as receivable and as relevant as one made to the opposite party. The position of the law appears to be, that private memoranda, though not communicated to the opposite side or third person are as evidence against a party as are admissions made to himself or herself in soliloquy.

Premised on the above authoritative decisions, it would appear clearly that where the admission of facts is clear and unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so.

In the instant application, the Applicant alleges that the Respondent admits the claim of compensation put forward by the Applicant, but that the Respondent has failed to make good on the payment for his respective parcels of land, which the Respondent’s agents occupied and continue to occupy thus denying him use of the same.

The Applicant cites various correspondences by the Respondent’s officers/ agencies in their official capacity concerning the subject matter of compensation, which the Applicant claims are proof that the Respondent unequivocally admits the claim. The Respondent, on its part, denies having ever made any admission of the claim. It is therefore called for to critically evaluate and analyze the correspondences referred to and the pleadings in order to determine whether they in fact amount to admission of the Applicant’s claim by the Respondent.

A careful reading of the contents of **Annextures** C1 – C6 to the affidavit in support of the application easily reveals that the Respondent in fact admits the Applicant’s claim for the amount of UGX 9,219,240,000 as the total market value of the Applicant’s land comprised in Busiro Block 351 Plot Nos, 49, 309, 353, 356, 357, 358, 364, 404, 598, and 600 land at Buddo. I also hasten to add that the admission from the same annextures is unequivocally and unambiguous in any event.

For instance, **Annexure C1** dated 26.07.2012 is a letter written by the Secretary Uganda Land Commission (ULC) to the Applicant asking him whether he was agreeable to the values for his respective parcels of land described above, as given by the Chief Government Valuer. In the same letter the author expressed the view that Government was ready to process payment of the compensation if the Applicant agreed to the values given.

Annexure C2 is a letter signed by the Minister of Lands, Housing & Urban Development dated 04.03.2015 addressed to the Chairman, Uganda Land Commission, requesting that the Applicant’s payment for compensation of his parcels of land be completed by liaising with the Ministry of

Finance, Planning & Economic Development. *Annexure C3* is the initial letter dated 16.04.2014 from the Principal Private Secretary to H. E the President to the Minister of Lands, Housing & Urban Development bringing to his attention the commitment of Government to pay compensation to the Applicant for his parcels of land.

On 05. 05.2015, the Secretary ULC wrote letter *Annexure C4* to the Permanent Secretary, Ministry of Finance, Planning & Economic Development, still acknowledging and emphasizing the need to have the Applicant compensated for his land in issue. In Letter *Annexure D,* the Permanent Secretary, Ministry of Lands, Housing & Urban Development also wrote to the Secretary ULC confirming the values of the land as given by the Chief Government Valuer and the total amount of money owing as compensation to the Applicant.

Correspondences bearing on the same point were also attached as annexures to the affidavit on reply of the Respondent sworn by Oburu Jummy Odoi. For instance, *Annexure “A”* is a letter written by the Solicitor General dated 16.07.2015 to the Secretary (ULC) bringing to his/her attention the earlier correspondences from the Private Secretary to H. E and the need to investigate the value of the land since the Applicant was supposed to be considered for compensation. *Annxture “B”* is letter dated 23.07.2015 from the Permanent Secretary/ Secretary to the Treasury addressed to the Secretary (ULC) requesting the latter to make arrangements to settle the outstanding compensation amount of UGX 9,219,240,000= to the Applicant * “...to avoid unnecessary litigation against Government”.*

It is in no doubt that all the above stated annexures of the Applicant and Respondent respectively squarely fall within the ambit of the principles enunciated in the cases and rule cited above. It need to be emphasized that the expression * “...on pleadings or otherwise...”* as used in *Order 13* *r. 6 (supra)* is very wide and expansive and includes letters, correspondences, and also extends to the agreed facts in the scheduling conference made pursuant to provisions of *Order 12 r.2 CPR.*

Of particular note also is the fact that the Respondent does not deny or challenge the annexures or their authenticity. It is trite law that when facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party the presumption is that such facts are accepted as the truth. See: *Massa vs. Achen [1978] HCB 297.* To that end, the annexures to the respective affidavits of the Applicant and Respondent mentioned above pass the test under *Order 13* *r. 6 (supra)* of * “... on pleadings or otherwise..”,* and amount to admissions. The net effect is that form the basis to draw inferences of clear unequivocal and unambiguous admission of liability by the Respondent of the Applicant’s claim. Accordingly, judgment on admission is entered for the Applicant/Plaintiff as against the Respondent/Defendant for the amount of UGX 9,219,240,000= being compensation value for the respective parcels of land of the Applicant/Plaintiff.

Issue No.2: Whether the Applicant is entitled to the orders sought

Apart from the order of judgment on admission, the Applicant sought for an order that the amount of compensation be paid through his Lawyers *M/s. Bashasha & Co Advocates*. There is no difficulty in granting that prayer since, in any case, the lawyers are seized with conduct of the Applicant's case including how and/or whether the Applicant is paid.

Issue No.3: Who is entitled to costs of this application?

The position of the law under ***Section 27(2) of the Civil Procedure Act (Cap.71)*** is that costs are awarded in the discretion of court, and shall follow the event unless for good reasons court directs otherwise. See: ***Jennifer Rwanyindo Aurelia & A' nor vs. School Outfitters (U) Ltd. CACA No.53 of 1999; National Pharmacy Ltd. vs. Kampala City Council [1979] HCB 25.*** The Applicant herein is the successful party and is awarded costs of this application. It is accordingly ordered as follows;

1. ***Judgment on admission is entered in favour of the Applicant/Plaintiff in HCCS No. 382 of 2015 in the terms that the Plaintiff is entitled to compensation for his parcels of land comprised in Busiro Block 351, Plot Nos. 49,309,353,356,357,358.364,404,598 and 600 land at Buddo.***
2. ***Judgment on admission is entered that the Applicant/Plaintiff be paid the sum of UGX 9,219,240,000/= (Nine Billion Two Hundred Nineteen Million Two Hundred Forty thousand Only) as compensation for land comprised in Busiro Block 351, Plot Nos. 49,309,353,356,357,358.364,404,598 and 600 land at Buddo.***
3. ***It is ordered that payments of the compensation monies be made to the Applicant/Plaintiff through his Lawyers M/s. Bashasha & Co. Advocates.***
4. ***The Applicant is awarded costs of this application***

BASHAIJA K. ANDREW

JUDGE

15/10/2015

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