

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**CIVIL APPLICATION NO 1067 OF 2016**

**ARISING FROM H.C.C.S. NO 472 OF 1996**

**YESERO MUGENYI}.....APPLICANT/JUDGMENT CREDITOR**

**VERSUS**

**HOIMA DISTRICT ADMINISTRATION}.....RESPONDENT/JUDGMENT DEBTOR**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**FINAL JUDGMENT IN HCCS NO 472 OF 1996**

This is an application brought by the Applicant/judgment creditor under the provisions of section 98 of the Civil Procedure Act as well as Order 21 rule 13 and 18 of the Civil Procedure Rules for an order for the judgment debtor to be ordered to pay an amount of Uganda shillings 8,230,000,000/= to the Applicant/judgment creditor as compensation for his land pursuant to a preliminary judgment of this court directing a survey and valuation of the land for purposes of his compensation. It is also for an order of payment of interest on the amount claimed from the date originally appointed by the court for final resolution of the dispute being six months after the judgment dated 21st of December 2009 at the rate of 12% per annum until payment in full. Thirdly, it is for consequential orders regarding the land in Plots 31 and 32 Block 19 Bugahya neither required for use by the Bulera Primary Teachers' College nor valued for compensation in favour of the judgment creditor. Finally it is for an order for costs to be paid to the judgment creditor.

The grounds in the notice of motion are as follows:

1. This Honourable Court passed judgment in favour of the Applicant on 21 December 2009 and directed the carrying out of a joint survey by the parties and valuation of land fraudulently acquired by the judgment debtor for the purposes of determining compensation payable by the judgment debtor.
2. The parties complied with the orders of the court and engaged in a joint survey and had the requisite compensation computed by the Government Valuation Surveyor, putting the appropriate compensation value for 43.6 acres of land to be paid by the judgment debtor at Uganda shillings 8,230,000,000/=.

3. Thirdly it is in the interest of justice that further consequential orders are made with regard to the land on Plots 31 and 32 Block 19 Bugahya, not required by Bulera Primary Teachers' College for its use and value for compensation to the judgment creditor.

The application is supported by the affidavit of Yesero Mugenyi which gives the facts in support of the application.

The facts are that the Applicant is the judgment creditor in HCCS No. 472 of 1996 where he sued the Respondent and judgment was entered in his favour by her Lordship Lady Justice Stella Arach Amoko on 21<sup>st</sup> December, 2009. Pursuant to orders number one and two of the judgment and decree the judgment debtor paid general damages of Uganda shillings 15,000,000/= in part compliance with the judgment. Under order number 3 in the decree, it was directed that the parties would carry out a joint survey and valuation of the land which the court adjudged had been fraudulently acquired by the judgment debtor. This was for purposes of determining compensation to be paid to the Plaintiff within six months. Since the passing of the judgment, the Applicant and engaged the judgment debtor, the Chambers of the Solicitor General and various government officials in an effort to secure compliance with the court orders. The engagement started with a letter dated 21<sup>st</sup> February, 2014 by the Minister of State for Bunyoro Affairs to the Attorney General after his intervention had been sought by the judgment debtor by a letter of 18<sup>th</sup> December, 2013. Subsequent to the letter of the Minister of Bunyoro affairs, the Applicant responded positively to his request to resolve the outstanding issues by negotiation and further that the judgment debtor state the amount of land required for its purposes and pays compensation accordingly. The Solicitor General's Chambers subsequently took up the issue and communicated the proposals of the judgment creditor to the Permanent Secretary, Ministry of Education and Sports requesting for a decision on how much land was needed by the Ministry for the use by the Primary Teachers' College in question. The Solicitor General initially responded by proposing that 30 acres of land were required for the purposes of the college. Following communication from the Ministry of Education and Sports, the Solicitor General directed the Chief Administrative Officer for Hoima district to procure the survey of the required land and obtain a print. Subsequently, the Solicitor General amended his request for land to 43.6 acres and communicated the same to the Chief Administrative Officer by letter. On 18<sup>th</sup> February, 2015, the Chief Administrative Officer confirmed to the Solicitor General in writing that the survey was complete. The Applicant attended the joint survey carried out by the parties on the 12<sup>th</sup> October, 2014 according to the survey report dated 26<sup>th</sup> March, 2015 made by his surveyor. On 3<sup>rd</sup> March, 2013 the Solicitor General by letter requested the Chief Government Valuer for a valuation report of the said 43.6 acres. On 20<sup>th</sup> April, 2015 the Chief Government Valuer issued his report addressed to the Solicitor General putting the value for compensation of the 43.6 acres required by Bulera teachers training college at Uganda shillings 8,230,000,000/=.

The parties fully and comprehensively complied with the orders of the court and have co-operated to find a final solution to the dispute accordingly. It is therefore necessary for the court

to make final orders given legal effect of both the judgment and decree of the court to meet the ends of justice.

In reply Denis Bireije, the Director Civil Litigation in the Attorney General's Chambers deposed to an affidavit in reply as follows:

He read and understood the Applicant's application seeking for orders against the Respondent to pay the sum of Uganda shillings 8,230,000,000/=, interest and costs of the suit. He has also read the judgment in civil suit number 472 of 1996 where the Applicant seeks to derive the orders he is praying for. The Applicant sued the Respondent in HCCS No. 472 of 1996 seeking general damages for trespass, conversion, detinue, violation and denial of fundamental human rights for the recovery of his property plus costs and interest. This suit was heard inter partes and finally judgment was entered against the Defendant on 21<sup>st</sup> December, 2009. The Applicant was awarded general damages of Uganda shillings 15,000,000/= with interest at court rate from the date of judgment till payment in full. Secondly land comprised in LRV 2345 folio 23 Plots 31 and 32 Block 19 Bugahya County Hoima was ordered to be jointly surveyed by the parties and the Defendant pays compensation to the Plaintiff for his established portion within six months of the order. The Applicant was also awarded costs of the suit.

Subsequently the Respondent paid the Applicant general damages awarded while waiting to comply with the other terms of the judgment. The Respondent expressed to the Minister of state in charge of Bunyoro affairs its inability to fully compensate the Applicant according to the letter of the chairperson LC 5 Hoima district dated 18<sup>th</sup> December, 2013. The said letter indicates that the Defendant is unable to pay for the compensation. The Attorney General was notified of disposition in a letter dated 21<sup>st</sup> February, 2014. They wrote to the Ministry of Education and Sports on 29<sup>th</sup> July, 2014 inquiring about how much land Bulera Primary Teachers' College required to operate optimally since there were allegations that it was built entirely on the Applicants land. Pursuant to this communication the Ministry of Education and Sports informed the office of the Attorney General that the land required by the teachers training college was only 30 acres. They wrote to the Chief Administrative Officer Hoima district local government and copied it to the Applicant notifying them of this position and requesting that 30 acres be surveyed and demarcated with the consent of the Applicant. The land which the Primary Teachers' College and its developments occupied was 43.6 acres instead of 30 acres after the initial survey and the land was resurveyed and the Ministry of Education and Sports was notified accordingly. They requested the Chief Government Valuer for valuation of the 43.6 acres. The Chief Government Valuer valued Plots 31 and 32 instead of only 43.6 acres and came up with the total compensation claimed by the Applicant. The sum is deemed exorbitant for only 43.6 acres of land and that is the sole basis of contention of the Respondent. His office requested the district staff surveyor to clarify on the boundaries of Plots 31 and 32 and they received a survey report that did not clearly state the boundaries of the Applicant land and that of the Primary Teachers' College as decreed by clause 3 of the judgment. The compensation due to the

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judgment creditor completely relied on the third clause of the judgment. In the premises the Respondent opposed the grant of consequential orders regarding this matter.

In rejoinder the Applicant having read the affidavit of the director of civil litigation Mr Dennis Bireije noted that he confirms that it is the Attorney General who requested the valuation for compensation from the Chief Government Valuer on terms agreed by both parties. The instructions for the valuation clearly indicate that the Chief Government Valuer was to value 43.6 acres of land. Contrary to the Respondent's assertions, the Chief Government Valuer fully understood the instructions and knew that he was only making a valuation surveyor for 43.6 acres of land because the government valuer's report also states so. Consequently the contention at this stage of the proceedings is not a genuine contention because the Applicant has met Mr Dennis Bireije several times over two years in connection with pursuing compensation arising from the valuation report and he never raised or asserted that the valuation was in respect of the whole of Plots 31 and 32 and not 43.6 acres and in the premises the clarification should be sought in writing or even verbally from the government valuation surveyor about exactly what acreage was valued. Had the Attorney General been genuinely in doubt about the size of the property valued, he ought to have requested for clarification from the government valuer. The Applicant concluded that the contention of the Attorney General's Counsel is an afterthought. It is admitted that the issue of whether or not the valuation report related to only 43.6 acres is the sole source of contention between the parties. It was impossible to determine the boundaries between the land that the Defendant/Respondent got resurveyed and included in its title as Plots 31 and 32 and the Applicants land amounting to 600 ha in total. The Defendant admits that the land belongs to the Applicant and the Applicant is entitled to compensation. The parties fully cooperated to fulfil the orders of the court to the extent possible as demonstrated by the correspondence attached to the affidavit in support of the application. Therefore the Respondent was obliged to pay for 43.6 acres and release the rest of the land wrongfully taken from the Applicant. This solution arrived at after the joint survey was in the best interest of the parties and within the scope of the decree of this court.

At the hearing of the application the Applicant was represented by Counsel Ebert Byenkya assisted by Counsel Ninsiima Agatha while the Respondent was represented by Claire Kukunda state attorney. The court was addressed in written submissions.

I have carefully considered the written submissions of both Counsel and the issues arising from the evidence and law cited in pleadings and submissions. The facts are generally undisputed that there was a judgment of the court on the 21<sup>st</sup> December, 2009 delivered by honourable lady justice Stella Arach Amoko who delivered judgment in favour of the Applicant against the Respondent and copies of the judgment were attached. The matter at hand was that the court directed the Respondent, the local government, to pay compensation to the Applicant for his land. This required preliminary steps to the compensation for both parties to jointly carry out the survey, identify such land belonging to the Applicant as had been wrongfully acquired, have it  
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valued and arrive at the amount payable in compensation. Counsel submitted that to the extent that the decree of the court is a final adjudication, the court found that the Applicant's land had been wrongfully included in the Respondent's title and the Respondent should compensate the Applicant for the same. The judgment directed the parties to conduct a joint survey and valuation of the land before arriving at the amount or quantum of compensation. The Applicants Counsel submitted that the judgment of the court was also in effect, a judgment ordering the partitioning of the land. While in most cases the partition would be ordered so that the two claimants or more would obtain separate titles to land or a separate share' in the Applicant's case, the partition was a notional one, the main purpose of which was to create two separate pieces of land and to assess the appropriate compensation that would be paid for the portion of land wrongfully acquired. This did not mean that in making final orders, physical partitioning could not be directed. The important thing was that the court for public policy reasons declined to order cancellation. The Defendant operated an educational institution on the land and the court declined to cancel the Respondent's title on grounds of public policy pursuant to its finding of fraud. Order 21 rule 18 of the Civil Procedure Rules permits a court which passed as a decree for the partition of property or for disposition of share of property if partition or separation cannot be made without further enquiry to pass a preliminary decree declaring the rights of the parties interested in the property and giving such further directions as may be required. The decree issued by the court was preliminary in nature and is now open to this court to issue final orders if it is satisfied that the directions issued earlier were complied with by the parties and there is a factual basis to make final orders for compensation and also conclusively resolve the rights of both parties with regard to the separate ownership of the land.

The Applicant's Counsel relies on an Indian High Court decision of **Basu Bahera vs. Dombosu Bahera and Others AIR 1954 223** where the scope of the rule in *pari materia* with the Order 20 rule 18 of the CPR is that considered. It was held that the rule empowers the court to pass a preliminary decree declaring the rights of the parties and giving such further directions as may be required from time to time. In a suit for partition, various disputes are likely to crop up and which cannot be disposed off at the trial. The court therefore provides that the rights of the parties are to be determined in the first instance and their disputes regarding divisions, allotments, ascertainment of assets and liabilities etc to be disposed of before a final decree is passed. All that the court does in passing the preliminary decree is to declare the rights of the parties and the nature of their rights until the dispute are finally disposed of and a final decree is passed in the suit which is deemed to be pending. During the period of the pendency of the suit, directions may be necessary from time to time to adjust the equities between the parties as regards the valuation of the properties and their allotment to individual shareholders and to decide all other incidental matters that may arise.

The Applicant's Counsel submitted that this is exactly what has occurred in the present suit. After declaring the rights of the parties the court ordered a survey to determine the extent of the

Plaintiff's interest in the land and a valuation for purposes of determining the appropriate amount to be paid in compensation. The court expected the entire process to be completed within six months and expected the parties to report the outcome of the survey and valuation so that a final decree would be passed. As it turned out, the process took much longer and it is now many years since the preliminary decree was issued. This was because of protracted negotiations the parties engaged in to resolve the residual disputes between them. From the correspondence attached, all the outstanding issues were resolved amicably. The Applicant also invokes the inherent powers of the court under section 98 of the Civil Procedure Act to make such orders as may be necessary for the ends of justice and to prevent an abuse of the process of the court.

As far as the merits are concerned, the Respondent admits all the matters in the affidavit in support and according to the Respondent the sole bone of contention is their belief that the Chief Government Valuer valued the whole of Plots 31 and 32 instead of only 43.6 acres. Consequently the view of the Respondent is that this resulted in an over valuation because the entire property was valued and not the portion agreed upon by the parties. He contended that this issue is easily resolved by reference to the documents attached to the Applicant's affidavit in support. There is a written request for valuation which expressly stipulates that 43.6 acres of land are to be valued. This was the land the school required to operate and that they were ready to compensate the Applicant for. The Applicant's Counsel also relies on the valuation report itself paragraphs 6.0 which stipulate that the land measures approximately 43.6 acres. It demonstrates unequivocally that the Chief Government Valuer understood fully the instructions issued by the Respondent for the valuation of 43.6 acres. The assertion that the property valued was the entire Plot 31 and 32 whose total area as stated in paragraph 5.0 is entitled "Tenure and Ownership" is given as approximately 138.68 ha. The valuation report refers to a survey report dated 26<sup>th</sup> March, 2015 and explicitly states that the valuation was based on the same survey report. The survey report clearly indicates that it was a survey report for only 43.6 acres of land. There can therefore be no doubt that the valuation report was for the 43.6 acres.

Regarding the valuation of the land the Applicant's Counsel prayed that the court should recognise that the land in the vicinity of Hoima Town is essentially about land with a high value. It was therefore not surprising that the figure is fairly substantial. In any case it should be borne in mind that the liability to pay compensation arose from the wrongdoing of the Respondent and therefore the Respondent cannot cry foul about the serious consequences of its own foul play.

Considering the residual land what needs to be done? Honourable Lady Justice Stella Arach Amoko directed the proceedings subsequent to the preliminary decree because she was not certain how much of the Plaintiffs/Applicants land was included in the title that had been wrongfully acquired by the Defendant/Respondent. She hoped that the surveyor would make that clear to her so that she could make final orders for compensation of the land wrongfully included. Unfortunately the envisaged survey proved to be impossible. The reason was that the Plaintiff/Applicant had originally been offered 600 ha of land which had not been surveyed. It

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was therefore impossible to ascertain land wrongfully included in the title. A survey to bring land under the operation of the Registration of Titles Act can only be done once. Subsequent survey can only open boundaries of the surveyed land but cannot identify and mark portions within the surveyed land because no markers would exist to serve as essential guide posts.

The entire area of Plots 31 and 32 amounted to only 138.67 ha. The land the Applicant was offered was 600 ha. It is possible that all the land in Plots 31 and 32 could have been established to belong to the Applicant had a survey been possible. The Defendant sought an amicable resolution to the dispute. It opted to manage its financial liability by seeking a negotiated settlement of the outstanding issues with the Plaintiff/Applicant. The basic settlement offer from the Defendant was simple. The Defendant would seek to retain sufficient land to carry out its activities of running an educational institution. Then the rest of the land would be surrendered to the Applicant to whom the Defendant acknowledged, the land, rightfully belonged. The offer was communicated in writing. It indicated inter alia that the land of the Primary Teachers' College was wholly on the land of the Applicant. And the Applicant would take the rest of the land which will be partitioned away from the land occupied by the Primary Teachers' College.

Pursuant to the correspondence, the office of the Attorney General took up the implementation of the settlement of the dispute as agreed. This is because the Respondent could not afford to pay for the rest of the Applicant's property. All that was left in Plots 31 and 32 would be partitioned and returned to the Applicant who would forbear from pursuing full compensation for the land which would be returned. In the settlement agreement, it was agreed to by all the relevant authorities including the central government, the local government and the Attorney General. There is survey report attached to the Applicant's affidavit in support to reflect the culmination of the settlement negotiations. Finally the Chief Government Valuer's report was also attached. When this court passed the preliminary decree, it envisaged the participation and cooperation of both parties. Even after the preliminary decree, the suit for final partition remains pending before the court until a final decree has been passed. So long as the parties adhered to the basic principles set out in the preliminary decree such as to carry out the joint survey of the property, they were acting within the scope of the preliminary decree. Because the suit was still pending, the litigants remain free as with all parties to the dispute to negotiate a final outcome of the suit in the interest of all parties concerned and this is what they did. This application is therefore for the final orders to issue in terms of the negotiated agreement of the parties.

The Applicant further relies on Order 25 rules 6 of the Civil Procedure Rules which provides that where it is proved to the satisfaction of the court that the suit has been adjusted wholly or in part by the lawful agreement or compromise of the parties, where the Defendant satisfies the Plaintiff in respect of the whole or any part of the subject matter of the suit, the court may on application of a party order that the agreement, compromise or satisfaction be recorded and per se decree in accordance with the agreement, compromise or satisfaction as far as it relates to the suit.

In the premises the Applicant prayed that the Defendant can retain 43.6 acres of land surveyed out of Plots 31 and 32 subject to the payment of the valuation sum of Uganda shillings 8,231,238,368/= as compensation to the Plaintiff. Secondly interest should be paid on the said sum at the rate of 12% per annum as prayed for in the notice of motion. Thirdly the remaining portion of the land in Plots 31 and 32 should be petitioned and transferred to the Plaintiff to hold in his own name and without further claim from the Defendant and the costs of this suit should be paid to the Plaintiff.

In reply the Respondent's Counsel agrees with the facts to the extent that judgment was issued and the Respondent was ordered to compensate the Applicant after ascertaining the portion of Plots 31 and 32 which belonged to the Applicant and how much did not. This was to be done through a joint survey within six months from the date of the judgment. However, due to a number of unavoidable circumstances, the survey was only carried out last year. The survey report was availed to the Respondent.

The Respondent's Counsel agrees that the court has discretion to make a final order to bring the matter to its logical conclusion. He also agrees that the only point of contention is whether the honourable court can give final orders where the preliminary orders had not been adhered to? In the judgment, it is clearly provided that land comprised in LRV 2345 folio 23 Plot 31 and 32 Block 19 Bugahya County Hoima had to be jointly surveyed by the parties and the Defendant pays compensation to the Plaintiff for his established portion within six months of the order.

The Respondent's Counsel submitted that although the joint survey was conducted, it did not clearly demarcate how much of Plots 31 and 32 belonged to the Applicant/judgment creditor. According to the survey report, the survey only verified the existence and boundaries of Plots 31 and 32. The report concluded that the survey measurements have clearly verified the existence and established precisely the boundaries and location of Plots 31 and 32 Block 19.

The report does not in any way say that a certain number of acres in Plots 31 and 32 belong to the Applicant and the remainder does not. This is contrary to what was ordered in clause 3 of the judgment. In page 14 of the judgment, it was held that the Applicant was not the exclusive owner of Plot 31 and 32. This was the origin of clause 3 of the judgment. Unless the portion of the two Plots is clearly spelt out to be the property of the Applicant, the Respondent will suffer great loss by compensating the Applicant from one that he is actually meant to be compensated for. It is therefore clear that the Respondent owns part of the two Plots 31 and 32 and specifically part of the land where the Primary Teachers' College resides.

In the premises, the Respondent's Counsel submitted that it is in the interest of justice and it would be prudent that clear demarcations are made as to how much of the two Plots each of the parties own. As regards the valuation of the property, although the property is described as measuring approximately 43.6 acres, the valuation was bound for the whole of Plots 31 and 32



according to paragraph 9.0 of the valuation report; which reads inter alia that the valuation surveyor was of the considered opinion that the total compensation award for the bare land comprised in Plots 32 and 31 is in the reasonable sum of Uganda shillings 8,230,000,000/= . In the premises it is clear that the Respondent's prayer for strict adherence to the judgment comes from the judgment itself.

On the issue of interest and costs, the Applicant was awarded interest or damages only in the High Court at Hoima at 6% per annum from the date of judgment in 2009 till payment in full plus costs of the suit. It will be very unfair and unjust to further impose a 21% rate of interest on the already exorbitant and disputed figure claimed by the Applicant. Counsel prayed that the Applicant's application is dismissed with costs to the Respondent.

In rejoinder, the Applicant's Counsel wrote lengthy submissions in breach of court directions to restrict the rejoinder to a maximum of four pages.

The Applicant relied on the supplementary affidavit in rejoinder to bring out certain documents.

The Applicant's Counsel submitted that the learned Attorney General's office does not address the submission that it was not possible any longer to carry out a resurvey of the property and identify any portion of land wrongfully included therein which was originally un-surveyed land. The Respondent's Counsel knows this position and the insistence that the impossible should be done only means that they are determined to frustrate the resolution of this suit instead of assisting the court. He reiterated submissions that the very matter of completing the survey in order to identify the Applicants land was directly addressed by a letter dated 13<sup>th</sup> September, 2016 which was written by the Solicitor General to the Chief Administrative Officer of Hoima district administration. Plots 31 and 32 were supposed to be jointly surveyed by the parties and the Defendant pays compensation to the Plaintiff for his established portion within six months of the order. The purpose of the letter was to request the surveyors to clarify on the portion that belongs to the Plaintiff out of Plots 31 and 32 for purposes of compensation.

The Solicitor General received two responses from the surveyors which clearly indicate that they were unable to ascertain the area or the portion that belongs to the Plaintiff out of Plots 31 and 32. In the second response is a letter written by the Chief Administrative Officer of the Respondent to the Solicitor General to the effect that the surveyors failed to establish the common boundary separating land between the Plaintiff and the Defendant and therefore the required portion cannot be computed.

The Applicant's Counsel contends that the correspondences demonstrate that the parties did their best to comply as much as possible with the court's directions but it transpired that what was envisaged by the court was not practicable. The learned Attorney General cannot now contend that this court must wait for what cannot be done. Secondly, the parties mutually agreed to compromise to bring the dispute to an end. Therefore such a survey would be academic if not

impossible. Other correspondence shows that the Primary Teachers' College was wholly on the Applicant's land. The Solicitor General actively participated in the implementation of the agreement which is to the effect that the Plaintiff would take the rest of the land after the partitioning away from the PTC.

The Attorney General's submission is that the settlement agreement can be challenged and it is therefore surprising that Counsel is backtracking on plans with his instructions and placing his client in a precarious position where its exposure to pay compensation for the land it cannot afford would be greatly increased.

The valuation report expressly defined the property that was being valued as amounting to only 43.6 acres of land. The report does not only define the property, it also refers to a survey report on which it is based. It is therefore surprising that the learned Attorney General insists on interpreting the valuation report to assert that the land valued was the entire Plots 31 and 32 and not just 43.6 acres. Documents must be interpreted as a whole and in context in line with the well established principles of interpretation. The learned Attorney General misdirected himself in attempting to mislead the court when he tried to interpret a couple of sentences in isolation of the entire valuation report to support his obviously incorrect assertion.

In any case in case the court is in doubt, the Applicant's Counsel submitted that it is still seized with jurisdiction to summon the Chief Government Valuer to court to clarify on this simple matter. Counsel further reiterated his submission on the basis of the judgment of the Indian High Court (supra).

Regarding the question of additional interest, Honourable Justice Stella Arach originally envisaged that the Plaintiffs/Applicant would not only have compensation sum agreed upon within six months but also that he would receive due payment for his wrongfully taken land within six months. It is now close to 8 years since that judgment. The original suit had been filed back in 1996 and therefore the Plaintiff has now gone 21 full years without an effective remedy for the wrongs committed by the Defendant. Even after the judgment it is very likely that the Applicant will have many more years without being paid and it would probably have to take out mandamus proceedings for enforcement measures in future to obtain any payment. It is well known that any court that fails to award interest in judgment against the Attorney General inadvertently denies the successful claimant an effective justice because government is notoriously slow to settle court awards. In the premises the Applicant's Counsel reiterated earlier submissions for the court to be pleased to award additional interest to the Plaintiff/Applicant on the compensation sum as prayed for in the application.

### **Final judgment of Court**

I have carefully considered the question before the court and it is agreed by the Respondent in its written submissions and in the affidavit in support that this honourable court has discretion to  
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make final orders to bring the matter to its logical conclusion. The Respondent's Counsel submitted that the only point of contention is whether the honourable court can give final orders where the preliminary orders had not been adhered to. The submission is based on clause 3 of the decree which reads as follows:

"The land comprised in LRV 2345 folio 23 Plots 31 and 32 Block 19 Bugahya County Hoima be jointly surveyed by the parties and the Defendant pays compensation to the Plaintiff for his established portion within six months of this order."

The contention of the Respondent is that the part encroached by the Primary Teachers' College which formed the basis of the suit was not known and therefore the survey was supposed to establish which parts of Plot 31 and 32 encroached on the Applicant's land.

To this controversy the Applicant's Counsel submitted that the entire Plots 31 and 32 comprises of 138.67 ha and the parties agreed to sever only 43.6 acres leaving the rest of the land to the Applicant. Secondly, that the entire property belonged to the Applicant but it was in the public interest that a portion of the property is given to the Primary Teachers' College.

I have carefully gone through the judgment of the High Court in the main suit dated 21st of December 2009. For purposes of a clear appreciation of the judgment of the court, I have carefully perused the judgment to point out the salient matters to put the final orders in context. It indicates that at the commencement of the trial two issues were agreed upon for determination by the court. The first issue was whether the Defendant obtained a certificate of title to the suit property fraudulently. The second issue is whether the reliefs sought in the plaint are available and should be granted to the Plaintiff.

As far as the first issue is concerned it is clearly indicated that the Defendant/Respondent obtained certificates of title of lands comprised in Plot 31 and 32 Block 19 as described in this application. The Plaintiff's case was that the titles had been obtained fraudulently. At page 13 the honourable court concluded that the manner in which the Defendant acquired the certificates of title to the suit land was not only high-handed but qualified to be fraudulent. She resolved the first issue in favour of the Plaintiff. This means that Plots 31 and 32 were fraudulently acquired by the Respondent. The court went on to consider the remedies and concluded that the Respondent had acquired the land to build the school thereon and had gone ahead to construct a Teachers Training College known as Bulera teachers training college. She concluded that this was a public institution and it would be contrary to public policy to cancel the title and evict an institution that would be serving the nation to cater for an individual. An order of cancellation of title would disorganise the district administration as well as students and parents. At page 14 she concluded that the Plaintiff was not the exclusive owner of Plot 31 and 32 and therefore his prayer for declaration that he is the exclusive owner of the said land i.e. Plots 31 and 32 Block 19 Bugahya cannot be granted. The honourable judge relied on the evidence on record which she

briefly referred to. This was with reference to the Plaintiff's preferred surveyor Mr Kyamanywa PW5 who testified that the Plaintiff and somebody from education in 1994 went to the land. They agreed to the part which was to be the Plaintiffs land and the part which was to go to education. Plot 31 and 32 are owned by the Defendant. The college is on Plot 31 which is owned by the Plaintiff. The Land he bought from Magara was included in Plots 31 and 32. The Plaintiff got 68 ha.

From the judgment itself, several facts which are material to the application are apparent. The first is that the teachers training college was given 138.74 ha of land by registration of a lease offer reflected in Plots 31 and 32 as described above. At page 14 of the judgment, Honourable Lady Justice Stella Arach Amoko held that the Plaintiff was not the exclusive owner of Plot 31 and 32 Block 19 Bugahya. She further noted that from the evidence of PW5 Plot 31 is owned by the Plaintiff and the college was in Plot 31. Land had been bought from one Mr Magara and it included Plots 31 and 32. The Plaintiff owned 68 ha which were included in Plots 31 and 32. The evidence also reflects that the Plaintiff had another lease offer for 600 ha. The Plaintiffs evidence was that Plots 31 and 32 was the property which he had bought and had been offered by the Uganda land commission.

Pursuant to clause 3 of the decree which is also clearly reflected in the judgment, the court decreed as follows:

"The land comprised in LRV 2345 folio 23 Plots 31 and 32 Block 19 Bugahya County, Hoima, be jointly surveyed by the parties and the Defendant pays compensation to the Plaintiff for his established portion within six months of the order.

It is quite apparent and not controversial that the court ordered a joint survey by the parties of the land comprised in LRV 2345 folio 23 Block 31 and 32 Block 19 Bugahya County, Hoima be done. The specific wording of the judgement of the court is found at pages 15 last paragraph and page 16 first paragraph where it is written as follows:

"The last prayer gives this court room to grant the plaintiff any other relief the court deems fit and proper. In the unique circumstances of this case, and as a result of my ruling in issue No. 1, as well as prayers (c), it would be in my view just and proper that the land be surveyed jointly by the two parties in order to establish the exact size of the plaintiffs portion that appears to have been included in the 138.74 ha the college was given. Thereafter the portion should be valued and the plaintiff should be paid compensation for it. All this exercise should be conducted within six months of this order in order to put to rest the dispute over the said land."

It can be recalled that issue number one was whether the property had been fraudulently acquired by the respondent/defendant. Prayer number (c) was for a declaration that the plaintiff is the

exclusive owner of the said land. The last prayer is for such relief as the court may deem fit and proper.

Secondly it was decreed that the Defendant shall pay compensation to the Plaintiff for his established portion. It is therefore clear that the Plaintiff was entitled to compensation from the Defendant for the portion encroached by Plot 31 and 32 which had been registered in the names of the Defendant/Respondent to this application. It was held that the registration was fraudulent but in the public interest, the Plaintiff would be compensated and it followed from that holding that the property would remain that of the school as the plaintiff would be compensated for the entire portion of his land encroached by Plots 31 and 32.

Subsequent action and the correspondences from the parties clearly indicate that they did not follow the judgment of the court to the letter. What was required was a simple establishment of the extent of land in the title granted to the Respondent" on the Plaintiffs property and to compensate the Plaintiff for the portion encroached. However, the outcome of the judgment took a different turn. The court did not reach any conclusion as to the acreage of encroachment by the Defendant/Respondent. However the court reached the conclusion that the property was not exclusively owned by the Plaintiff. How much was exclusively owned by the Plaintiff was to be established by a joint survey and that portion even if it was more than 100 ha were to be compensated by the Defendant.

In exhibit YM2A being a letter of the LC 5 Chairperson dated 18<sup>th</sup> December, 2013 at page 2 and the first paragraph thereof; it was established by the district staff surveyor that Bulera PTC developments fell within the title land of Plots 31 and 32. The Applicant was to be compensated for land occupied by Bulera PTC.

In exhibit YM2B being a letter dated 21<sup>st</sup> February, 2014 from the Office of the Prime Minister, the Minister of State for Bunyoro affairs addressed a letter to the Attorney General and suggested that Bulera PTC is wholly on the land of the Plaintiff/Applicant to this application and that it was agreed that it should occupy the part it can afford to pay for. The Minister of state for Bunyoro affairs therefore suggested to the Attorney General that the entire property developed by the Bulera PTC rested on the Plaintiff's property.

In YM3 being a letter attached to the Applicant's application, it was agreed that Bulera PTC would retain only what it could keep to operate optimally. This was in a letter written by Messieurs Mugenyi & company advocates to the Attorney General dated 21<sup>st</sup> July, 2014.

In exhibit YM4 being a letter addressed to the Permanent Secretary Ministry of Education and Sports dated 29<sup>th</sup> July, 2014 by the Solicitor General, the Permanent Secretary Ministry of Education and Sports was informed about the court decree. He was also informed of the need to carry out a joint survey to ascertain the area of land encroached by the Bulera Primary Teachers' College described in the title issued to them. The Ministry was required to advise the Defendant

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on how much land would be required for Bulera PTC and how much would be paid for so that clause 3 of the decree could be implemented as soon as possible because the longer it took, the more detrimental it would be to the Defendant.

In exhibit YM5A, dated 1st of September, 2014, the Permanent Secretary Ministry of education & sports wrote to the Solicitor General attaching a letter from the Chief Administrative Officer, Hoima district local government proposing the minimum land required for Bulera PTC to operate optimally. The letter from the Permanent Secretary addressed to the Chief Administrative Officer Hoima district local government is marked as YM5B and is dated 1<sup>st</sup> September, 2014. In that letter, the Permanent Secretary department responsible for Primary Teachers' College was to advise the Defendant Hoima district local government on the appropriate and minimum land required by Bulera PTC to carry out its activities. The Permanent Secretary also proposed that a minimum of 30 acres of land would be sufficient to accommodate Bulera PTC, a demonstration school and the necessary college activities.

In exhibit YM6 attached to the application is a letter dated 18<sup>th</sup> December, 2014 addressed to the Chief Administrative Officer, Hoima district local government on the same subject matter addressed by the Solicitor General. He was requested to instruct the district staff surveyor to conduct a survey of the required 30 acres, demarcate and obtain a print and a copy which would be availed to the Solicitor General for records and another copy used to obtain a title deed of the delineated area in favour of government.

In exhibit YM7A in a letter dated 15th of October 2014 written by the principal of Bulera Core PTC to the Permanent Secretary Ministry of education on the subject of the minimum land required for Bulera PTC informed the Permanent Secretary that the board has observed that the acres suggested as being enough for the college plant and development including the demonstration school was an estimate. Subsequently the board instructed the principal to get an independent surveyor to immediately survey the land on which the college plant, demonstration school, playground together with the pine forests of over 10 years was occupying. The surveyor took two days to work out the land occupied by the college together with the development and came up with an area of 43.6 acres instead of the 30 acres suggested or proposed. The Plaintiffs surveyor arrived at almost the same acreage of the land encroached and got 44.3 acres but agreed to take 43.6 acres as the figure occupied by the school. In light of the facts in the advice the Permanent Secretary Ministry of Education and Sports on the agreed acreage required by the school to accommodate all the developments the college had for over 15 years to put in place.

In exhibit YM7B being a letter written by the Solicitor General addressed to Messieurs Mugenyi & company advocates and copied to the Permanent Secretary Ministry of Education and Sports, the Applicant was informed that the Bulera Primary Teachers' College required 43.6 acres of land and not 30 acres as had earlier been communicated. Secondly by copy of that letter, the Solicitor General requested the Chief Administrative Officer Hoima to inform the district of

surveyor to make the survey for the area as soon as possible. Subsequently in exhibit YM8 being a letter addressed to the Solicitor General by the Chief Administrative Officer dated 18<sup>th</sup> February, 2014, the Chief Administrative Officer wrote that the land had been demarcated for purposes of the school and the developments occupy 17.64 ha equivalent to 43.6 acres. He attached a blueprint of the survey and wrote that the land covered all the current development of the institution.

In exhibit YM9 a letter dated 26<sup>th</sup> March, 2015 addressed to the Chief Government Valuer Ministry of lands, housing and development, the surveyor of the Plaintiff Mr Tulyamuleba Henry of SM Geo Team Ltd wrote that on 12<sup>th</sup> October, 2014 a team of three surveyors namely the government surveyors and two private surveyors; one for the Plaintiff and another for the college converged at Bulera PTC to demarcate the boundaries and ascertain the size of land occupied by the College and its developments. The exercise was partly boundary opening and partly subdivision of Plot 31 & 32 Block 19 Bugahya. At the end of the exercise, they ascertained the size of land occupied by the college as 43.6 acres. The survey report was attached.

I have considered the survey report and it clearly demonstrates that the purpose of the survey was to demarcate the boundaries of land measuring 43.6 acres and verify and establish its location on Plots 31 and 32. It was established that the piece of land on Plot 31 measured 9.337 acres while the piece of land occupied in Plots 32 measured 34.263 acres giving a total of 43.6 acres occupied by the Bulera PTC. Subsequent to the survey, in a letter dated 3<sup>rd</sup> March 2015 the Solicitor General wrote to the Chief Government Valuer to value 43.6 acres in accordance with the consent decree for purposes of compensation of the Plaintiff. The letter of the Solicitor General was exhibited in the application as YM10. It informed the Chief Government Valuer that the court ordered that the Defendant should pay compensation to the Plaintiff for his land. The Ministry of education wrote to the Solicitor General informing the Solicitor General of the land required for the smooth operation of Bulera Core PTC which land was located at Plots 31 and 32 Block 17 Bugahya, Hoima. He was supposed to liaise with the Plaintiff's lawyers to arrive at the most appropriate compensation amount ordered by the court as soon as possible.

In exhibit YM11 the district staff surveyor of Hoima district local government addressed a letter to the Chief Government Valuer dated 15<sup>th</sup> April, 2015 on the same subject of the civil suit and the survey report of only 43.6 acres for Bulera Core PTC. This letter informed that the government valuer of the findings in the survey which indicates that the college occupied Plots 31 and 32 Bugahya Block 19. The surveyors give the same findings in hectares as 17.64 ha which is equivalent to 43.6 acres. It was the land occupied by the institutional development which included college buildings, a demonstration school and the pine tree plantation among other developments.

Finally in exhibit YM12 in a letter dated 20<sup>th</sup> of April, 2015, addressed to the Solicitor General by the Chief Government Valuer, the Chief Government Valuer indicated that he had inspected

the property pursuant to instructions by the letter of the Solicitor General dated 3<sup>rd</sup> March, 2015. They inspected the property on 12<sup>th</sup> March, 2015. He relied on the survey report dated 26<sup>th</sup> March, 2015.

On the survey report dated 26<sup>th</sup> of March, 2015 and subsequent report of 15<sup>th</sup> April, 2015 the contents of which were assumed to be accurate and true and adopted as to form the basis for the appraisal. The property according to the search of the title by 7<sup>th</sup> April, 2015 revealed that it was a freehold FRV 585 Folio 7 Bugahya Block 19 Plots 31 and 32 in the names of the Uganda land commission according to an instrument number 401757 of 26<sup>th</sup> August, 2008 and the land measuring approximately 138.67 ha. They also noted that the property description comprises of a teacher's College school, a demonstration primary school and a pine tree plantation. The land is a generally undulating hill measuring approximately 43.6 acres. The immediate neighbourhood is of mixed use with residential, commercial and plantation agriculture.

The Chief Government Valuer wrote that the scope of the valuation was limited to the land aspect only and the developments were not taken into consideration and did not form a basis for his opinion. The valuation is as follows:

1. Value of the land was Uganda shillings 4,360,000,000/=.
2. Loss of rent/business opportunity was valued at Uganda shillings 1,971,132,822/=.
3. Disturbance allowance was 30% valued at 1,899,516,546/=
4. The total compensation award in Uganda shillings was 8,231,238,368/= . He rounded this off to Uganda shillings 8,230,000,000/=

This is the figure that the Plaintiff is claiming in this application. It is apparent from the correspondence that a compromise was made between the parties in which Bulera PTC and the Ministry of Education and Sports opted to relinquish further claims to Plots 31 and 32 save for 43.6 acres which was required for the activities of Bulera Core PTC. This acreage was to be surveyed, demarcated and granted to the Defendant/Respondent for purposes of the college.

The first question for consideration is whether there was a joint survey. Indeed in terms of the decree, there was a joint survey using surveyors of the Plaintiff as well as surveyors of the Defendant. Both of them came to the same conclusion but did not ascertain how much of the land of the Plaintiff had been encroached by Plots 31 and 32 Block 19 Bugahya. In any case the leases in respect of Plots 31 and 32 had expired. The land is now registered in the names of Uganda Land Commission. This of course would be contrary to article 237 of the Constitution of the Republic of Uganda which vested all land in the people to be managed by the District Land Board save for land acquired in the public interest. If Uganda Land Commission had acquired this property in the public interest by 2008, it would throw in another aspect that needed to be considered. For the moment it is not necessary to consider the effect of the acquisition of land by Uganda land commission. It is sufficient to uphold and apply the holding of the court in 2009



that Plots 31 and 32 by registration in the Defendant's names were acquired fraudulently. What was required was therefore to ascertain how much property the Plaintiff held within that Plot. This effort was frustrated and the suit proceeded by a clear consensus among the authorities to treat the property amounting to 43.6 acres accommodating the entire development of Bulera PTC as belonging to the Plaintiff. This avoided the issue of ascertaining how much of the Plots 31 and 32 was encroached on by Bulera PTC out of the Plaintiffs property. In fact the entire area of Plots 31 and 32 is 138.67 ha and is currently registered in the names of Uganda Land Commission and FRV 585 folio 7 Bugahya Block 19 Plots 31 and 32. The lease of Bulera PTC had expired.

Finally I have considered carefully the submissions of the State Attorney which is to the effect that the survey report does not say that a certain number of acres in Plots 31 and 32 belonged to Mr Mugenyi, the Applicant herein which is contrary to what was ordered in clause 3 of the judgment. I agree that this is not what is indicated in the judgment. I also agree that it is the holding of Honourable Lady Justice Stella Arach Amoko that the Applicant was not the exclusive owner of Plot 31 and 32 described above. However, it is important to note that the Defendant and all the relevant officials have since abandoned a claim on Plots 31 and 32 as described in the original lease agreement which comprises as I have noted of 138.67 ha and they have instead opted to settle for 43.6 acres on the assumption that the school and developments thereon is situated on land that belongs to the Plaintiff. Subsequently, the Attorney General who represented the Defendant in the proceedings sought a valuation of 43.6 acres for purposes of compensation of the Plaintiff. I have also noted that the court had decided that the full extent of the Plaintiff's land should be ascertained. Evidence suggests that the Plaintiff had more than 68 ha. It is on that basis that it was suggested that the Defendant takes less land which it could afford. This avoided the problem of having to establish the exact extent of encroachment on the Plaintiff's property. It was thought that this would minimise the cost of compensating the Plaintiff.

Finally I agree with the submissions of the Plaintiff's Counsel that the parties compromised this suit by agreeing to value only property upon which Bulera Core Primary Teachers' College had developments. The Chief Government Valuer who was instructed by the Solicitor General, among other things, wrote in his report that he did not value the developments on the property but only the land. Thirdly, I do not agree that the entire 138 ha was valued by the Chief Government Valuer. All parties relied on a joint survey report which ascertained the area where the school was located and the developments thereon that amounted to 43.6 acres. The Solicitor General who represented the Respondent in the negotiations and proceedings after the judgment cannot run away from the implications of instructions to the Chief Government Valuer following a joint survey report demarcating 43.6 acres on which the school is sitting currently. The other compromise is the abandonment of a further claim to the rest of Plots 31 and 32 by the Respondent which if pursued was considered to lead to more liability against the Respondent and

in favour of the Plaintiff whom they were decreed to compensate. This would be the effect of proceeding with the judgment as originally decreed to value the full extent of the encroachment by Plots 31 and 32 into the Plaintiff's land. If that course of action is pursued, it would not lead to saving any money for the Respondent but would instead escalate the costs of compensation as noted by the Chief Administrative Officer, the principal of Bulera PTC and the Minister of state for Bunyoro affairs in the various correspondence I have referred to in this ruling. Lastly I also agree with both Counsels that the court has inherent jurisdiction to make such orders as would meet the ends of justice. The course of action suggested by the Attorney General's Counsel acting on behalf of the Respondent to further ascertain the exact area affected by Plots 31 and 32 would only lead to delay in satisfaction of a judgment of a suit that was filed in 1996 and decided in December 2009 to the prejudice of the Plaintiff. The Plaintiff is an elder citizen and is entitled to the fruits of his judgment where compensation was to be made within six months. Furthermore, further delay would escalate the costs as determined by the people on the ground namely the beneficiary of the land as well as the district administration. It follows that the interest of justice is better served by accepting valuation for 43.6 acres on which the school is comfortably sitting and permitting the school to get a title for this piece of property and desist from following the original claim for Plots 31 and 32 which according to the judgment of the court was fraudulently acquired by the Respondent for purposes of Bulera PTC. The public interest in having Bulera PTC would clearly be served more by restricting the area claimed for the school to the agreed 43.6 acres rather than to establish the full extent of encroachment by Plots 31 and 32 into the Plaintiffs land and that would be the full import of following clause 3 of the judgment to the letter. It means that the plaintiff had more land in Plots 31 and 32 which would escalate the respondent's cost of compensation. I agree that the parties compromised the suit in the interest of both parties.

The Applicant relied on Order 21 rule 18 of the Civil Procedure Rules for this submission that the court passed a preliminary decree. The question of whether the court passed a preliminary decree is not a matter of form but of substance. Order 21 rule 18 provides as follows:

“18. Decree in suit for partition of property or separate possession of a share.

Where a court passes a decree for the partition of property, or for the separate possession of a share in the property, the court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the parties interested in the property and giving such further directions as may be required.”

The decree issued by the court not only declared the rights of the parties interested in the property but also gave directions about how those rights would be enforced. A copy of the decree was attached to the application as YM1B and clause 3 thereof clearly provided that the land would be jointly surveyed by the parties and the Defendant would pay compensation to the

Plaintiff for his established portion within six months of the order. It was a preliminary decree to the extent that directions were given for a joint survey to be conducted by the parties. Secondly, it is provided that the Defendant would pay compensation to the Plaintiff for his established portion within six months. The portion of the Plaintiff was supposed to be established by the joint survey. The quantum of the compensation was not established. In other words it was assumed that a quantum would be arrived at based on the acreage of encroachment into the Plaintiff's property which was to be established by the joint survey.

Furthermore, the parties did carry out the joint survey but instead of establishing the level of encroachment, the authorities decided that the Respondent could not afford taking more than the property they would be able to compensate the Plaintiff for. It was proposed that the Respondent would take only 30 acres. However after the principal Bulera PTC commissioned a further survey, they established that the developments and optimal use of land for the Bulera PTC would require 43.6 acres. As a compromise they agreed with the Plaintiff to demarcate 43.6 acres specifically where the College was located and where its developments were situated. In other words the college would give up a claim for 138 ha comprised in Plots 31 and 32 described above which contained more of the Plaintiff's land therein. It follows that the intent of the judgment which was to compensate the Plaintiff instead of nullifying Plots 31 and 32 was fulfilled by the agreement of the parties. This agreement is reflected in several correspondences I have set out above. The agreement was endorsed by the Solicitor General finally forwarding a survey report for the 43.6 acres to the Chief Government Valuer for valuation for purposes of establishing the compensation payable to the Plaintiff. Because further action was required for there to be a final decree, clause 3 of the judgment of the court was preliminary in nature and the Plaintiff is entitled to a final order recognising the amount of compensation he is entitled to.

The final order of this court following the joint survey envisaged in the judgment of the court is that the Plaintiff/Applicant is entitled to compensation for 43.6 acres and the Respondent gave up further claims to Plots 31 and 32 as against the Plaintiff.

The 43.6 acres shall be issued to the Respondent for purposes of the Bulera Core Primary Teachers' College as surveyed by the relevant authority and the Respondent shall make the requisite application to the relevant authority for title to be issued for the portion agreed to.

The Plaintiff is entitled to compensation according to the valuation of the Chief Government Valuer in the letter dated 20<sup>th</sup> April, 2015 addressed to the Solicitor General, Ministry of Justice and Constitutional affairs. Regarding the question of whether the Respondent can pay the compensation established by the Chief Government Valuer. The court has no jurisdiction to establish the compensation payable except it can only rely on the valuation of the government valuation surveyor because the court ordered valuation in the original judgment. The valuation when made becomes part of the judgment. The valuation surveyor has clearly explained in his report that he has not taken into account the developments made by Bulera PTC but only valued

the land according to the formula which is reflected in the valuation survey report. Consequently the question of valuation arises from article 26 of the Constitution which requires adequate compensation to be paid where property is acquired compulsorily. It was envisaged by the parties that the Plaintiff would be compensated for 43.6 acres only and thereafter it will be used exclusively for purposes of the Respondent's school. I cannot therefore add or subtract from the valuation of the Chief Government Valuer putting the value of the land without developments at Uganda shillings 8,230,000,000/=. Valuation was decreed at page 15 of the judgment. The Plaintiff is entitled to compensation according to the established valuation of the property.

I have considered the claim for interest at 12% per annum from a date six months from the date of judgment in December 2009. I do not agree with the prayer for interest because valuation is at the time of judgment and took into account the value of the land without developments at the time of valuation in 2015. Valuation was only conducted and completed in 2015. The Plaintiff is entitled to interest at court rate from the date of judgment till payment in full.

Regarding consequential orders on Plot 31 and 32, the Plaintiff is entitled to acquire the rest of the property not claimed by the Respondent. The claim is restricted to the property initially owned by the Plaintiff and which is not the subject matter of the 43.6 acres surveyed and demarcated for purposes of Bulera Core Primary Teachers' College.

The Plaintiff is also entitled to costs of this application having succeeded in the suit and this application was a necessary step pursuant to the preliminary decree to obtain a final order closing the matter.

The final decree of the court shall include the determination in this application.

Final judgment delivered in open court on 28<sup>th</sup> of April, 2017

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Counsel Kukunda Clare S.A. for the Respondent

Counsel Ninsiima Agatha holding brief for Ebert Byenkya

Yesero Mugenyi the Applicant present in court

Charles Okuni: Court Clerk

Julian T. Nabaasa: Research Officer Legal

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**Christopher Madrama Izama**

**Judge**

**28<sup>th</sup> April 2017**