

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT TORORO
MISC. APPLICATION NO. 58 OF 2023
(ARISING FROM MBALE CIVIL SUIT NO. 11 OF 2009)

ATTORNEY GENERAL:.....APPLICANT

VERSUS

- | | | |
|---|---|---------------------------|
| <p>1. LUNAR ASSOCIATES LTD
2. DR. MBADWE JOHN
3. OSUNA OTWANIA
4. GREAT LAKES CFS (U) LTD
(GREAT LAKES PORT LTD)</p> | } | <p>RESPONDENTS</p> |
| <p>5. MAOMBO IMOIR LOENARD
6. ABER DIANA
7. CAPT. PATRICK NELSON WAMALA MUSOKE</p> | | |

RULING

BEFORE: HON. DR. HENRY 1. KAWESA

This application was brought by way of a notice of motion under the relevant laws. It seeks orders that:

1. The consent judgment entered on the 15th day of September 2022 by this Honourable Court be reviewed and set aside.
2. The Applicant be allowed to survey, mutate, and transfer the portion of the transport corridor on land comprised on **LRV 3581 Folio 5 Block**

- 4 Plot 124 situate at Malaba Town, Tororo District** wherein it has already deposited compensation in Court.
3. The commissioner land registration be directed to vacate the caveats lodged by the 2nd, 5th and 6th Respondents on land comprised on LRV 3581 Folio 5 Block 4 Plot 124 situate at Malaba Town, Tororo District pending the conclusion of the process of surveying, mutating and transferring the transport corridor.
 4. The order of attachment issued on behalf of the 7th Defendant by the High Court *Commercial Division in Misc. Application No.58 of 2015* against land comprised on **LRV 3581 Folio 5 Block 4 Plot 124 situate at Malaba Town, Tororo District** be lifted pending the survey, mutation and transfer of the transport corridor.
 5. The compensation money deposited in Court remains in Court until the determination of the parties' interests and the balance be paid upon registration of the Applicant's title.
 6. The costs of this application be provided for.

The application is supported by the affidavit of Canon Eng. Perez Wamburu; and is opposed by affidavits in reply of the 1st, 2nd, 3rd, 4th, 6th and 7th Respondents.

The 5th Respondent did not file an affidavit in reply, although he was served with the -application hence putting himself outside these proceedings.

Representations

The Applicant is represented by the Attorney General 's Chambers, Mbale Regional Office; the 1st and 2nd Respondents are represented by M/S Ngobi & Co. Advocates; the 3rd Respondent is represented by M/S Mbale Law

Chambers & Advocates; the 4th Respondent is represented by M/S Babayinza, Kavuma, Mugerwa & Ali Advocates; the 6th Respondent is represented by M/S Mukasa Charles & Co. Advocates; and the 7th Respondent is represented by M/S Oketcha Baranyanga & Co. Advocates/ Solicitors.

The 1st, 2nd, 4th and 5th Respondents jointly filed written submissions but these were filed by M/S Kabayinza, Kavuma, Mugerwa & Ali Advocates. The Applicant's Counsel also filed written submissions, all of which the Court has considered.

Background

Land comprised on **LRV 3581 Folio 5 Block 4 Plot 124 situated at Malaba Town, Tororo District measures approximately 342 acres** (*hereinafter subject land*). The Applicant identified a portion of the said land which was affected by the standard gauge railway project. It did all the legal processes and compulsorily acquired the said portion on the subject land. However, before payment of compensation to the beneficiaries, the Applicant discovered conflicting claims of ownership on the subject land by the 1st to 4th Respondents and the claims were subject to a suit at Mbale High Court vide Civil Suit No. 11 of 2009.

Thus, the Applicant instituted interpleader proceedings vide Misc. Application 252 of 2016 and was ordered to deposit compensation for the portion compulsorily acquired to a tune of Ugx.4,000,000,000 (*Four Billion Ugandan Shillings Only*) on the account of the Registrar High Court pending the determination of ownership of the subject land. The Applicant complied and deposited the said money on the 22nd of September, 2021.

Subsequently, the parties in Civil Suit No.11 of 2009 reached a consent agreement which was endorsed as a consent judgment by Court on the 15th of September, 2022. The consent judgment decreed the ownership of the subject land into the 4th Respondent, but also detailed how the compensation deposited in Court by the Applicant was to be shared amongst the parties to that suit. A consequential order was sought by the said parties and was issued on the 10th of February, 2023, to implement the terms of the consent judgment accordingly.

Unknown to the Applicant, the subject land had other claims by the 5th, 6th and 7th Respondents herein. Facts show that the 5th Respondent had lodged a caveat on the subject land on the 13th of September, 2016; that the 6th Respondent did the same on the 18th of February, 2022; and that there was an earlier proceeding by the 7th Respondent against the 4th Respondent vide Civil Suit No.36 of 2015 wherein the subject land was attached by an order vide Misc. Application No.58 of 2015 arising therefrom pending the disposal of the main suit or the 4th Respondent depositing in Court a bank guarantee amounting to \$ 504,830 within a month of the ruling delivered on 24th of July 2015. The order of attachment was registered by the 7th Respondent as an encumbrance on the subject land and it still subsists.

It is clear that the Applicant wants to use the portion of land it compulsorily acquired by surveying, mutating, and transferring it as a transport corridor. Its obstacle is the subsisting caveats, and order attaching the subject land pending the disposal of Civil Suit No.36 of 2015. The Applicant desires that the said

encumbrances are temporarily lifted to enable it survey, mutate, and transfer the portion it acquired.

The 1st to 4th Respondents are apparently exhausted with the controversy involving the subject land and its why they reached a consent agreement. Their affidavits in reply show no objections to the application, provided their consent judgment is preserved. It is highly probable that they wish to have it implemented so as to share the compensation held on the account of the Registrar, the High Court. However, their wish is imperiled by the Applicant's advice to the said Registrar not to release any penny to them until every controversy involving the subject land is determined.

Since the 5th Respondent did not file an affidavit in reply, he is also considered to have no objection to the application. As for the 6th Respondent, she wants her caveat maintained and avers that she, with others, filed Civil Suit No.49 of 2019 which will be rendered nugatory should the caveat be lifted. She also states that she made efforts to be added to Civil Suit No. 11 of 2009 vide Misc. Application No.348 of 2021 but all efforts proved futile; and that she appeared in Court at the time of signing the aforesaid consent judgment and raised a fact that she had filed an application for consolidation of the related matters but the same was opposed.

Lastly, the 7th Respondent also wants the order attaching the subject land maintained. His assertion is that the removal of the same would prejudice his rights because he might lose a security to performance of a decree and consequently make it impossible to recover any eventual decretal sum in the suit against the 4th Respondent. He also averred that he is not a party to Civil

Suit No.11 of 2009 and thus will not be able to claim on the compensation deposited by the Applicant in Court.

The 7th Respondent further made averments about the legality of compulsory acquisition of the portion of the subject land. However, the Court shall not delve into those averments since the issues before it involve different assertions.

The issues for resolution are:

1. Whether the consent judgment entered by this Court on the 15th day of September, 2022 should be reviewed and set aside?
2. Whether the Applicant should be allowed to survey, mutate and transfer the portion of the transport corridor on the suit land wherein it has already deposited compensation in Court?
3. Whether the commissioner land registration should be directed to temporarily vacate the caveats lodged by the 2nd, 5th, and 6th Respondents on the suit land pending the conclusion of the process of surveying, mutating and transferring the transport corridor?
4. Whether the order of attachment of the suit land issued on behalf of the 7th Respondent by the High Court Commercial Division in Misc. App. No.58 of 2015 should be temporarily lifted pending the survey, mutation and transfer of the transport corridor?
5. Whether the compensation money deposited in Court remains in Court until determination of the parties' interests and the balance be paid upon registration of the Applicant's title?
6. Whether the Applicant is entitled to costs?

Resolution of the Issues

Issue No. 1:

Whether the consent judgment entered by this Court on the 15th day of September, 2022 should be reviewed and set aside?

Having read the parties' averments, and addressed myself to the law and principles on review and setting aside consent judgments, I did not find any cause as to why the impugned consent judgment should be set aside at the instance of the Applicant.

The Applicant does not demonstrate how it is aggrieved by the said consent judgment or how it affected its interest in the portion of land it compulsorily acquired.

It seems to me that the law on compulsory acquisition of property by Government and facts are clear. The Applicant complied with the required legal process, implying that it lawfully acquired the subject portion of land. The consent judgment does not affect that.

The existence of the consent judgment and other circumstances involving the 5th to 7th Respondent are simply a reflection of how complex the fact of ownership of the subject land is. However, the complexity can be demystified without affecting the Applicant's interests.

For the reasons above, I do agree with the 1st to 4th Respondents and their Counsel that there is nothing to upset the consent judgment.

Consequently, the first issue is found in the negative.

Issue No.2:

Whether the Applicant should be allowed to survey, mutate and transfer the portion of the transport corridor on the suit land wherein it has already deposited compensation in Court?

The Applicant did the needful by commencing interpleader proceedings as envisaged under 0.34 of the Civil Procedure Rules, S.1 71-1. That by itself protects it with respect to the subject portion of the land it compulsorily acquired against any person who might claim interest in it.

None of the Respondents doubts that the Applicant could compulsorily acquire a portion of the subject land regardless of any conflicting claims on it.

Under the law, whoever is entitled to the said portion of land is entitled to be compensated by the Applicant. The Applicant did so by depositing a sum of money representing the said portion of land in Court which implies that it discharged itself from any obligations in that land as far as any claimants to it is concerned. Thus, whoever asserts any right in the said portion of land can assert it against the compensation deposited by the Applicant in Court.

It is a fact that the Applicant did not compulsorily acquire the whole subject land, but a small portion of it. Meanwhile, the Respondents' conflicting assertions touch the whole subject land. In view of these facts and the observations already made, it would be illogical to stop the Applicant from utilizing what it lawfully acquired, but the Respondents should be left to tussle with each other in Court for the compensation and the residue of the subject land.

In conclusion therefore, I do agree with the Applicant and 1st to 4th Respondents that the Applicant should be allowed to survey, mutate and transfer the portion of the transport corridor on the subject land.

This issue is found in the affirmative.

Issue No.3:

Whether the commissioner land registration should be directed to temporarily vacate the caveats lodged by the 2nd, 5th and 6th Respondents on the suit land pending the conclusion of the process of surveying, mutating and transferring the transport corridor?

In view of the observations and finding on the second issue, this issue is also found in the affirmative.

It is needful to add that when the caveats are temporarily vacated, the Commissioner for Land Registration should not permit any other transaction on the subject land except one by the Applicant.

Issue No.4:

Whether the order of attachment of the suit land issued on behalf of the 7th Respondent by the High Court Commercial Division in Misc. App. No.58 of 2015 should be temporarily lifted pending the survey, mutation and transfer of the transport corridor?

I have read Counsel for the Applicant's submissions on this issue. On the other hand, the 7th Respondent's Counsel did not file any submissions to address this issue.

Nevertheless, the 7th Respondent's objection to the lifting of the order of attachment on the subject land is that he might be unable to recover a decretal sum against the 4th Respondent in suit between them.

It is needful to state that order of attachment in favour of the 7th Respondent affects the whole the subject land; and that it is a security for performance of a decree that might ultimately bind the 4th Respondent.

On the contrary, the Applicant's interest is in a very small portion of the subject land; and has already paid for it, The Applicant's Counsel rightly submitted that the Applicant acquired interest in the subject portion of land upon paying compensation for it and that it is entitled to registered it. Counsel supported that submission with the case of *Sharif Osman vs. Haji Haruna Mulangwa; SCCA No.38 of 1995.*

Under the law, the subsisting order of attachment could not bar the Applicant from compulsorily acquiring the subject portion of land, provided it compensated all those interested in it.

It is a fact that the order of attachment preceded the Applicant's compulsory acquisition of the subject portion of land. Thus, the Applicant acquired encumbered land. This then implies that the compulsory acquisition was subject to the said order; and further that any compensation made by the Applicant was effectively encumbered by operation of law. The view is simply a juxtaposition of the proposition that "I fa person purchases an estate which he knows to be in occupation of another other than the vendor, he is bound by all the equities which the parties in such occupation may have in the land" (Supreme Court in *Uganda Posts & Telecommunications vs, A.K.P.M Lutaaya SCCA NO. 36 of 1995.*)

Whether or not the 7th Respondent will be entitled to the compensation will be established eventually. For now, what the Court is considering is his entitlement to security of the order of attachment on the subject land, especially the portion compulsorily acquired by the Applicant.

In the Court's view, that security can be guaranteed without encumbering the Applicant, and in no way other than against compensation already deposited by the Applicant in Court.

Consequently, I find this issue in the affirmative as well, **Issue NO.5:** Whether the compensation money deposited in Court remains in Court until determination of the parties' interests and the balance be paid upon registration of the Applicant's title?

In view of the observations and findings under the second, third, and fourth issues, it is only reasonable that the subject compensation remains in Court until the rights of the Respondents in proceedings pending before any Court and involving the subject land are established.

Accordingly, this issue is answered in the affirmative.

Issue No.6:
Whether the Applicant is entitled to costs?

As the Applicant's Counsel submitted relying on **Section 27(2) of the Civil Procedure Act Cap.71**, costs are awarded at the discretion of Court, and usually follow the event unless for some good reason Court directs otherwise.

Counsel for the Applicant prayed for costs of the application.

On the other hand, Counsel for the 1st, 2nd, 4th and 5th Respondents also prayed for 50% of the costs. However, considering that the application did not

succeed entirely, and that most of the orders sought were not objected to by 1st to 5th Respondents, the Court is inclined to order that each party bears its own costs.

This issue is thus found in the negative.

Result

In view of the findings above, the application partially succeeds and the following orders are hereby issued;

1. The Applicant is allowed to survey, mutate, and transfer the portion of the transport corridor on land comprised on LRV 3581 Folio 5 Block 4 Plot 124 situate at Malaba Town, Tororo District for which it deposited compensation in Court.
2. The Commissioner for Land Registration is hereby directed to temporarily vacate the caveats lodged by the 2nd 5th and 6th Respondents on land comprised on LRV 3581 Folio 5 Block 4 Plot 124 situate at Malaba Town, Tororo District pending the conclusion of the process of surveying, mutating and transferring the transport corridor. The Commissioner for Land Registration shall not permit any other transaction on the said land during implementation of this order, except one by the Applicant.
3. The Commissioner for Land Registration is hereby ordered to temporarily lift the order of attachment issued on behalf of the 7th Defendant by the High Court Commercial Division in Misc. Application No.58 of 2015 against land comprised on LRV 3581 Folio 5 Block 4 Plot 124 situate at Malaba Town, Tororo District pending the survey, mutation and transfer of the transport corridor by the Applicant.

4. The compensation money deposited in Court by the Applicant shall remain in Court until the determination of the Respondents' interests in the subject land, and the balance shall be deposited in Court as well upon registration of the Applicant's title.
5. Each party shall bear its own costs.

I so order.

Delivered at Tororo

this 20th Day of March



HON. JUDGE

2024

- 1 Mr. Aaron Motoaka Bageya CSI for App^l
- Mr. Allan Motali CSI for the 3rd respond^t

In the presence of:

2 ...

3..... Osumu Osumu - 3rd respond^t

4..... Maumbo Imogiri - 5th respond^t.

5. Mr. Senabulya John - ~~for~~ the 6th respond^t