

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT RUKUNGIRI
ORIGINATING SUMMONS NO.008 OF 2019
IN THE MATTER OF COMPENSATION PAYMENT FOR LAND SITUATE AT
KIKUNDABUKAMA CELL, NYAKATUNGURU WARD, KIHIMI TOWN
COUNCIL, KANUNGU DISTRICT.

BETWEEN

UGANDA NATIONAL ROADS AUTHORITY:..... APPLICANT

VERSUS

1. MUHEKI WINIFRED
2. TINDIMWEBE JESICAH (Administrator of the estate of the late
Zikamushungirwa Balaam)
3. FRED NGABIRANO(Administrator of the estate of the late Ezra
Kururagire):..... CLAIMANTS

BEFORE: HON. JUSTICE TOM CHEMUTAI

RULING

This is an application for interpleader, brought by Originating Summons by the Applicant, Uganda National Roads Authority, under Order 34 Rule 1 of the Civil Procedure Rules and Sections 59 and 98 of the Civil Procedure Act, against the Claimants, for orders that:

- i. That the Applicant deposits in Court, UGX. 16.151,200/= being compensation sums in respect to land situated at Kikundabukama Cell, Nyakatunguru Ward, Kihimi Town Council, Kanungu District acquired for purposes of construction of the Rukungiri-Kanungu Road project, being claimed by the 1st, 2nd and 3rd Claimants or that Court directs the Applicant as to how the said compensation sum should be disposed of.
- ii. The Applicant be discharged from any liability arising out of any claim and or action for the compensation sums currently in its possession on

- account of the above described land, and any damages potentially arising out of the same actions.
- iii. That the Applicant be allowed to proceed with construction on the acquired right of way for the Rukungiri to Kanungu Road project, on the above described land.
 - iv. The Costs of this application be provided for.

The grounds of this application are that:

- a. The Applicant is currently undertaking the process of construction of the Rukungiri to Kanungu in line with its statutory mandate under the Uganda National Roads Authority Act 2006, and during the process of land acquisition for the same project earmarked the above described land among the properties that would be affected by the road project.
- b. The land situated at Kikundabukama Cell, Nyakatunguru Ward, Kihihi Town Council, Kanungu District, that is being claimed by all the Claimants, and the affected portion was valued at UGX. 16.151,200/= (Uganda Shillings Sixteen Million, One Hundred and Fifty-One Thousand Two hundred).
- c. The Claimants all claim an interest in the suit property.
- d. Due to the pending dispute between the claimants, the Applicant is constrained in determining who to pay the compensation sum.
- e. As such the Applicant's Road construction project is likely to be stalled due to a failure to pay prior compensation to the rightful claimant, which may result in high prolongation costs of the project, which is likely to the detriment of the Government of Uganda and the taxpayer.
- f. It would be extremely inequitable and contrary to the interest of justice for a public project that carries with it, potentially immense benefits for all Ugandan citizens, to be curtailed by the dispute of the Claimants.

- g. The Applicant claims no interest in the above stated compensation sum in dispute.**
- h. There is no collusion between the Applicant and any of the claimants.**
- i. The Applicant is willing to deposit the compensation sum into court or to dispose of it as the court may direct.**

This application is supported by the affidavit of Ms. Felly Kamyia, the Legal Officer of the Applicant.

The 3rd Claimant his affidavit in reply and opposed this application and further contended that the application was devoid of merit, frivolous, vexatious, and total abuse of Court process.

Representation

The Applicant was represented by the Applicant's Directorate of Legal Service and the 3rd Claimant was represented by M/S Ahimbisibwe & Agaba Co. Advocates.

Applicant's submissions

Counsel for the Applicant submitted that the suit land is being expropriated for the construction of the Rukumgiri to Kihhi Road. That the suit land had been valued at UGX. 16.151, 200/= (Uganda Shillings Sixteen Million, One Hundred and Fifty One thousand Two hundred).

Counsel averred that the Applicant can under Section 42 of the Land Act and Article 26(2) and 237(2) of the Constitution of Uganda compulsorily acquire land for public use. That the Applicant is obliged to pay compensation to the owner of the land before acquiring the same. That the Applicant is willing to pay the sum as approved by the Chief Government Valuer to the rightful owner of the suit land. That the Applicant has no interest in the suit land hence the application to have the same deposited in Court.

Counsel submitted that there was a pending dispute over the compensation for the suit land by the Applicant. That the 1st and 2nd Claimants, hold letters of Administration of the estate of the late Balaam Zikamushungirwa and they

allege that the suit property forms part of the estate of late Zikamushungirwa. He added that the 3rd Claimant is an Administrator of the estate of the late Ezra Kururagire and also claims that the suit land belonged to the estate of the said late Ezra Kururagire.

Counsel contended that late Kururagire sued the late Zikamushungirwa over the suit land in Magistrate Grade II Court at Kihikihi vide Civil suit No. 22/1991 and won the suit. That the late Zikamushungirwa appealed to the Chief Magistrate's Court vide Civil Appeal No. MKA 82/1991 and won the Appeal. That thereafter, late Kururagire appealed against the decision in No. MKA 82/91 and the appeal was decided in his favor on 3rd August 2004.

Counsel contended that when the Applicant wanted to acquire the suit land for the road works, that the 3rd Claimant presented the judgment in Civil Appeal No.06/1994 as proof of ownership of the suit land.

Counsel contended that the 1st and 2nd Claimants filed Misc. Application No. 015 of 2019 in this Court, seeking for the order that the judgment in Civil Appeal No.006/1994 be declared null void, and of no legal consequence and that the 3rd Claimant be prohibited from uttering or tendering the impugned judgment for any transaction.

Counsel averred that this Court found no merit in the said Misc. Application No. 15/19 and dismissed it. He added that the Court declined to pronounce itself on who was the rightful beneficiary of the compensation between the 1st and 2nd Claimant and the 3rd Claimant.

3rd Claimant's submissions

Counsel submitted that the Applicant was served with the judgment of this Court in Civil Appeal No.06 of 1994, where it confirmed and declared that suit land belonged to the estate of late Ezra Kururagire wherein the 3rd Claimant is the Administrator.

Counsel contended that this Court dismissed 1st and 2nd Claimants' Miscellaneous Application No.0015 of 2019, which was challenging the validity of judgment in Civil Appeal No.06 of 1994. He added the said ruling

was served on the Applicant to effect the payment of Shs.16,157,200/= to the 3rd Claimant. That instead of effecting the said payment, the Applicant connived with the 1st and 2nd Claimants to file this Application.

He further contended that there is no evidence that the 1st and 2nd Claimants appealed against the ruling of the said Court in Miscellaneous Application No.0015 of 2019.

Counsel submitted that there is no delay caused to the Applicant in proceeding with the construction of the road because there is no hindrance from parties.

The merit of the application.

I have considered the parties' pleadings, submissions and the authorities thereto cited by counsel. This application is for interpleader brought Order 34 Rule 1 of the Civil Procedure Rules, and Rule 2 provides;

"2. Averments to be proved by applicant. In every suit of or application by way of interpleader the applicant shall satisfy the court by way of affidavit or otherwise—

(a) that the applicant claims no interest in the subject matter in dispute other than for charges or costs;

(b) that there is no collusion between the applicant and any of the claimants;

(c) that the applicant is willing to pay or transfer the subject matter into court or to dispose of it as the court may direct."

It is worth noting that the suit land has had a prolonged legal battle starting from 1991 when the suit was filed in Magistrate Grade II Court at Kihiki. The dispute was originally between the late Ezra Kururagire and the late Balaam Zikamushungirwa and now in Court, are their respective Administrators.

From the record, it is clear that the trial Court in Civil Suit No.22 of 1991, determined that the suit land belonged to the late Kururagire. The late Zikamushungirwa was dissatisfied with the judgment and he appealed to the Chief Magistrates' Court in civil appeal No.82 of 1991, which allowed his appeal. The late Kururagire was dissatisfied with the 1st appellant court's

judgment and made a second appeal to this Court in Civil Appeal No.006 of 1994 and this Court allowed the Appeal and confirmed the trial Magistrate decision that the suit land belonged to the late Ezra Kururagire.

When the Applicant embarked on the project of constructing Rukungiri to Kanauagu Road in 2019, the dispute over suit land arose again, and the 1st and 2nd Claimant filed Miscellaneous Application No.15 of 2019 in the Court challenging the validity of the judgment of this Court under which the Late Kururagire was declared as owner of the suit land.


The said Miscellaneous Application No.15 of 2019 was dismissed by this Court for lack of merit. I concur with counsel for the 3rd Claimant that the said ruling of this Court was not appealed against or set aside.

Therefore, it is clear the dispute over ownership of suit land by the late Ezra Kururagire and late Balaam Zikamushungirwa was determined by this Court in Civil Appeal No.06 of 1994, where it declared that the suit land belonged to Ezra Kururagire. Hence the compensation for the suit land from the Applicant is to be paid to the Administrator of the estate of the late Ezra Kururagire.

I accordingly find no merits in the application and I hereby dismiss it with costs to the 3rd Claimant.

It is so ordered.

Ruling read and delivered at Rukungiri this 19th day of January 2024.


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TOM CHEMUTAI
JUDGE