

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

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CIVIL SUIT NO. 063 OF 2011

**1. RUTH OLWIT
2. NABISALWA
NORAH :::::::::::::::::::::::::::::::::::PLAINTIFFS**

10

VERSUS

**MUKONO MUNICIPAL
COUNCIL :::::::::::::::::::::::::::::::::::DEFENDANT**

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**BEFORE: THE HON. JUSTICE GODFREY
NAMUNDI**

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JUDGMENT

This suit is brought jointly by the two Plaintiffs claiming for compensation for their properties, Special Damages, General and Punitive Damages and a Permanent Injunction, arising from the Defendant's acquisition of the Plaintiffs' property without compensation.

The facts constituting this matter are laid out in the
Plaint but in summary are as follows:

- 5 a) The Plaintiffs own separate residential houses
on land situate in upper Kawuga, Mukono
Municipality.
- b) The first Plaintiff's land was surveyed and a
lease offer was issued to her on 6/5/2002.
- 10 c) The 2nd Plaintiff's property is unsurveyed and
untitled and has some residential houses on it.
- d) That on 18/7/2010, without Notice or approval
15 of the Plaintiffs, the Defendant's agents
brought tractors and started constructing a
road through the Plaintiffs' properties.

The Defendant did so in disregard to the Plaintiffs'
20 right to Notice and compensation as required by Law.
That the Defendants' acts are illegal and
unconstitutional.

During the process, one of the 2nd Plaintiff's houses was broken. The first Plaintiff's property on the other hand is marked for demolition.

5 The Plaintiffs further claim they have suffered Special Damages as a result of the Defendant's actions to wit:

10 a) Valuation expenses incurred at Shs.1,000,000/= for 1st Plaintiff and Shs.480,000/= for the 2nd Plaintiff.

b) The first Plaintiff's property is valued at Shs.203,291,400/= and Shs.54,031,250/= for the 2nd Plaintiff.

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That the Plaintiffs are entitled to payment to cover costs of getting alternative residences and purchase alternative land to construct new buildings to house their families.

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The Plaintiffs therefore seek Declaratory Judgment that:

- i) The Defendant's acts violate the Plaintiffs' fundamental rights and freedoms.
- ii) The Plaintiffs are entitled to compensation.

5 They also pray for compensation of Shs.257,311,650/=, Special Damages, Punitive Damages, Permanent Injunction, Interest and Costs.

The Defendants filed a Written Statement of Defence
10 claiming that the Plaintiffs have no genuine claim. That they have a right to open up a Public road as authorized by Law and if a person had constructed any structure on the road then the structure was illegal and the owner cannot claim for compensation.

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They also claim that they served the Plaintiffs with Enforcement Notices and the 2nd Plaintiff freely and voluntarily unroofed her house and left the rest standing which the Defendant has not demolished.

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They also allege in the said defence that investigations were carried out by the Inspector

General of Government who found that indeed a road was gazetted in 1998 and instead the Plaintiffs encroached on the said road after the said gazetting. That the Plaintiffs developments are illegal and
5 hence they are not entitled to compensation.

Finally that the Defendants have not opened the part where the Plaintiffs have structures and the illegal structures are still standing on the road.

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The parties through their Counsel filed a Joint Scheduling Memorandum which generally summarizes the facts as outlined above and no issues were framed.

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When this matter came up for hearing, it transpired that the Defendant's Lawyer Ms. Max Mutabingwa had pulled out of the case.

20 The Defendants were duly served, acknowledged service but did not turn up for hearing.

This Court proceeded under **Order 9 Rule 11 of the Civil Procedure Rules** and directed the Plaintiffs to file Witness statements which was done.

5 The Plaintiffs rely on the evidence of 5 witnesses and they unilaterally framed the issues which in the absence of anything to the contrary, Court will proceed to deal with.

10 **Issue No. 1:**

Whether the Defendant committed trespass by entering on to the Plaintiff's properties without the Plaintiffs' knowledge, authority and approval.

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It has been submitted for the Plaintiffs that Plaintiff No. 1 bought the Plot in issue from one Kaya William on which she constructed various structures. She has an Agreement of sale. She produced approved
20 building plans duly approved in 1994 by the relevant authorities. The 2nd Plaintiff also produced evidence of ownership.

The events of 18th July 2010 whereby the Defendant's agents started construction of the road, destroyed part of Plaintiff No. 2's structures and
5 marked that of the first Plaintiff are not disputed.

Relying on the authority of **Lutaaya Vrs. Sterling Civil Engineering Co. Ltd. (2009)**. The Plaintiffs claim the Defendants trespassed on their land.

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There is no doubt that any unauthorized entry on to the Plaintiffs' land would amount to trespass. The constitution of Uganda and Section 2 and 3 of the Land Act 2000 recognise ownership of land. The
15 Plaintiffs purchased the land in the mid 1990's when the road had not yet been gazetted. This is borne out by the Agreements of sale exhibited and not controverted.

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Issue No. 2:

Whether the construction of the road without Notice was lawful.

It is submitted for the Plaintiffs that during the month of July, the Plaintiffs just saw the Defendants rolling tractors starting to construct the road.

5 The 1st Plaintiff's house was marked by the Defendant's agents (Evidence of Plaintiff No. 1). She expected a formal communication but got none. She complained to the I.G.G for intervention who stopped the exercise pending investigations.

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Later on 26/10/2010 the Defendants sent an **Enforcement Notice**, requiring the Plaintiffs to remove their structures at their expense.

15 It is submitted that Notice is a requirement under the Land Acquisition Act - Sections 5 and 6 and that these were not complied with. Further that Section 5 of the Land Act was not complied with. That as a consequence the rights of the Plaintiffs were
20 violated.

The Plaintiffs do not mention the findings of the I.G.G which Report was annexed to the Plaint. Therein the I.G.G had recommended that those who had approved plans before the gazetting of the land, and
5 the Bibanja holders who were genuine were entitled to compensation.

From the evidence on record and the Report of the I.G.G, the Plaintiffs were genuine occupants of their
10 properties. They were entitled to adequate Notice. In that regard, I find that their rights were violated.

Article 26 of the Constitution provides the right of every person to own property and that no person
15 shall be deprived of property or any interest or right over property unless prompt payment of fair and adequate compensation is made prior to the taking possession or acquisition of the property. Refer:
Advocates for Natural Resources Governance and Development and Another Vrs. Attorney General - Constitutional petition No. 40/2013.
20 It follows that the Plaintiffs were entitled to

compensation before any construction could take place.

Issue No. 3 is also accordingly resolved in favour of the Plaintiffs in view of the findings under Issue No. 2.

Issue No. 4:

Whether the Plaintiffs are entitled to any remedies.

It is submitted for the Plaintiffs that they are entitled to the remedies outlined in the prayers in the Plaint already outlined at the beginning of this Judgment.

I need not go into the submissions regarding Issues No. 1, 2 and 3 which are all resolved in favour of the Plaintiffs.

What is clear however is that all the Plaintiffs have proved is that they have a right to be compensated prior to any acquisition by the Defendant.

For Plaintiff No. 1 her property is still intact. She carried out precautionary measures by having the said property valued as per the evidence of **Mugisha Turyahikayo Allan**, a Land Economist who
5 conducted the valuation exercise.

He valued the 1st Plaintiff's property at Shs.203,291,400/= and that of the 2nd Plaintiff at Shs.54,031,250/=. The Report was exhibited and is
10 not controverted. The Plaintiffs incurred Special Damages by way of financing the Valuation Report. These amounted to Shs.1,480,000/=.

In respect of compensation, the Plaintiffs claim the
15 compensation should be subject to interest of Shs.25% per annum from the 18/7/2010 when the Defendant's activities commenced.

In respect of the prayer for compensation, I find that
20 it can only be applicable if/when the Defendant's resume construction of the road in respect of Plaintiff No. 1.

The 1st Plaintiff's structures are still intact and have not been removed. She would only qualify for compensation at the time the Defendant chooses to
5 continue with construction and this would be prior to any activity.

For the 2nd Plaintiff, compensation is due to her since her property was destroyed.

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Both Plaintiffs are however entitled to recover the Special Damages of Shs.1,480,000/= for their due diligence to value the property.

15 Regarding General, or Punitive Damages this Court is not agreeable to granting Orders for General Damages on speculation especially in respect of Plaintiff No. 1 whose property is still intact.

20 Plaintiff No. 2's property was damaged as a result of the Defendant's activities as per the evidence of the 2nd Plaintiff.

General Damages are meant to try and place the Plaintiff in the position he/she was in before the injury/violation complained of occurred. I would
5 award General Damages of Shs.10 million in favour of the 2nd Plaintiff whose property was affected. The first Plaintiff has not proved any such injury/violation to qualify for General Damages. Claims of mental torture, anguish and emotional stress are
10 submissions from the Bar and not supported by evidence.

In conclusion I enter Judgment for the Plaintiffs in the specific areas discussed and in particular find as
15 follows:

1. The Defendant's trespassed on the Plaintiffs' property.
2. The Plaintiffs were entitled to due **Notice** and the Defendant's activities contravened **Article 26 of the Constitution** and **Sections 5 and 6 of the Land Acquisition Act**.
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In that respect, the Plaintiffs were entitled to compensation before the construction commenced. I accordingly make the following orders:

- 5 1. Plaintiff No. 2 is to be paid Shs.54,031,250/= as compensation for the property as valued by the Valuer.
- 10 2. Construction of the road affecting the 1st Plaintiff **will only** proceed after payment of Shs.203,291,400/= as valued.
In this respect it is ordered that the 1st Plaintiff's property is not tampered with until the payment has been effected in full.
- 15 3. Interest at Court rate per annum is ordered in respect of Number 1 above from the date of Judgment.
- 20 4. Interest at Court rate per annum to be paid in respect of Number 2 above as soon as the amount payable becomes due.
- 25 5. Both Plaintiffs to be paid their Special damages totaling Shs.1,480,000/= (One million for Plaintiff No. 1 and Shs.480,000/= for Plaintiff No. 2).
6. General damages of Shs.10,000,000/= are awarded to Plaintiff No. 2 in respect of the unlawful damage to her property.
7. Costs of the suit to Plaintiffs.

8. Interest at Court rate on 5, 6 and 7 above per annum from date of Judgment.

Godfrey Namundi

5 **JUDGE**

18/06/2015

18/06/2015:

Mr. Raphael Baku for Plaintiffs

Both parties absent

- 5 Court: Judgment delivered in open Court. This matter proceeded ex parte after Defendants failed to turn up for hearing when duly served.

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Godfrey Namundi

JUDGE

18/06/2015

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