

developments without payment of prompt, fair and adequate compensation.

5 (b) An order that the Respondents jointly and severally do pay prompt, fair and adequate compensation to the Applicant and all people affected by the Bujagali Hydro Electric Project in Budondo Sub-county Jinja District and Wakisi Sub-county, Buikwe County for all the identified and documented land crops and buildings taken over by the Respondents at
10 market values to be assessed by Court.

(c) The Respondents do pay the Applicants costs of this Application.

15 The grounds relied on are:

1. The Applicant is a customary owner under or Licences of land with developments thereon at Budondo Sub-county.
2. The Respondents have compulsorily taken over the said
20 land and that hundreds of other residents in the area and leased it to the third Respondent for purposes of the Bujagali Hydro Electric Project without first paying prompt adequate and fair compensation.

3. That the Respondents have refused to pay or compensate for crops which were not more than four months old at the time of valuation.
- 5 4. The Respondents have refused to purchase the said land and developments thereon at a market price but are instead offering compensation which is not prompt, fair or adequate.

The brief facts of this matter are that the Applicants are customary
10 owners of the land at Bujagali under Article 237 (3) (a) of the
Constitution and Section 3 of the Land Act.

The Respondents compulsorily took over the said land, on which the
3th Respondent procured a Title and began setting up a power plant.
15 The 4th Respondent procured a lease over the same and is
constructing a power plant thereon.

The Applicant and others have however never been compensated for
their land and crops and other developments on the land.

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This matter was first filed in 2002 and nothing much happened until
2007 when the Applicants applied to substitute the 3rd Respondent
i.e. AES NILE POWER LTD with the fourth Respondent BUJAGALI
ENERGY LTD. This was on grounds that the 3rd Respondent had
25 wound up and was no longer operational and its role had been taken
over by the 4th Respondent.

The Judge then Justice Zehurikize ordered that the 4th Respondent be added as a party. He also ordered that if the Applicants so wished, they could withdraw their claims against the 3rd Respondent.

5 Apparently this was not done.

Later on in 2012 when this matter came up for hearing, the Respondents raised preliminary objections about the competence of the Application before this Court.

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It was claimed that the Application amounted to a representative action made on behalf of unidentified and unspecified number of people filed without leave of Court, at the time when the 4th Respondent was not in existence.

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The other objection was that the High Court had no jurisdiction to grant the remedy of a Constitutional Declaration.

Justice Anglin overruled the 2 objections firstly that a matter brought under Article 50 (1) and (2) of the Constitution does not require an order for a representative action. She similarly overruled other objections on grounds that where the objection goes to the substance of the case, the Court decides on the merits of the case on the basis of Law only. She directed therefore that the matter be heard on its
20 merits.
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The instant Application is supported by the affidavit of the Applicant, Richard Kafumba.

- 5 - Therein he avers that he is owner of customary land in Budondo sub-county, Kagoma County and he has developments thereon.

- 10 - That the Government of Uganda through the 2nd Respondent is in advanced state of leasing a big piece of land to the 3rd Respondent for purposes of the Bujagali Power Project and that will displace thousands of people who inhabit Budondo Sub-county and Wakisi District.

- 15 - That the 4th Respondent took over the assets and liabilities of the 3rd Respondent and that the 4th Respondent is in advanced stages of constructing Bujagali Hydro Power Project.

20 The affidavit then narrates that the officials of the Respondents informed the Applicant and other residents of the affected areas that the land and developments thereon would be valued and negotiate purchase the said land at market prices/values.

25 Paragraphs 6, 7 and 8 narrate that valuation was carried out by valuers commissioned by the Respondents and that the said

valuation was carried out. That during valuation several crops were cut and those affected were compensated.

Further that land and crops affected were identified and documented.

5 Crops which were not more than 4 months were indicated as young.

Paragraphs 9-13 continue with the narration.

A set of documents for each affected resident which included
10 personal identification, description of the land, and assessment of compensation for crops were produced.

That their assessment used a base value of Shs.800,000/- per acre which is below the market value of land which is in the region of
15 Shs.3,000,000/- per acre.

That the rates used by the Respondents are those approved by the District Land Board of 9/2/2000 and do not reflect the current market value of the crops which have since grown. Crops which were below
20 4 months old were valued at Shs. Zero.

The Applicant and residents then appealed to the Minister of Lands for intervention but he failed to do so.

In Paragraph 18 of the affidavit, the Applicant avers that he relies on the Annexures attached to the affidavit of 10/01/2002 filed in Court.

The Annexures referred to in Paragraph 18 are:

- 5 1. A list of those affected.
2. Lists of affected residents with personal identification description of the land and assessment of the crops.
3. A copy of the approved list by the District Land Board for compensation rates.
- 10 4. A letter to the Minister of Lands for the intervention of the Minister, copies of correspondences, and
5. A letter threatening compulsory acquisition of the Applicants' land under the Electricity Act 1999.

15 The first respondent did not file an Affidavit in reply to the Amended Application which includes the 4th respondent. They however filed a Supplementary Affidavit in which they aver that the 3rd Respondent was acting as an Agent of the 1st and 2nd Respondent in respect of the acquisition of the land for the Power Project.

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It is further averred that the claim that Shs.800,000/- was the value per acre of land was not true. That that is the value for the land in the Islands. That the land on the main land was valued at Shs.1,200,000/- per acre.

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It is also averred that the Applicant was offered the value of his holding but he refused to accept.

Finally that the Applicant has exhibited no authority to represent any
5 other person.

The 4th Respondent's affidavit in reply also raises issues of lack of orders for representative action. Further that the 4th Respondent was not in existence at the time of filing this suit and is hence wrongly
10 sued in connection with violations of the Applicants' rights and that it is a separate legal entity.

In an additional affidavit, the 4th Respondent has averred that the land in question was compulsorily acquired by the Government for public
15 use and any compensation is the responsibility of the Government. The 4th Respondent therefore denies being responsible for any compensation or the activities of the 3rd Respondent.

I have looked at the pleadings and I have also gone through the
20 submissions by both parties.

While the Application is for prayers under Article 50 (1) and (2) of the Constitution, the submissions by the Applicant allege matters which are not in the pleadings. For example the Applicants raise
25 issues that the land in question was acquired in contravention of the

Constitution and that the 4th Respondent is a trespasser. Further that the 4th Respondent's Title is impeachable for having been obtained fraudulently.

- 5 The Applicant in the said submissions further goes ahead to pray for punitive damages citing Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act.
- They further pray that the Respondents' Certificate of Title should be cancelled.
- 10 - Further they pray compensatory damages for wrongful deprivation of the suit land.
- Damages for inconvenience caused to the Applicants for deprivation of the use of the land.
- 15 This matter was brought under the provisions of Article 50 (1) and (2) of the Constitution. The said Article for all intents and purposes deals with *public interest litigations*.

In Misc. Application No. 39/2001; The Environmental Action
20 Net Work Ltd. Vrs. Attorney General and National
Environment Management Authority, Justice Ntabgoba Principal
Judge as he then was observed that there are decided cases where
an Organization can bring public interest action on behalf of groups or
individual members of the public even though the applying
25 organization has no direct individual interest in the infringing acts it

seeks to have addressed. He cited the cases of Reg. Vrs. I.R.C Exp. Federation of Self-Employment (H.L.E) [1982] A.C 643 and Rev. Christopher Mtikill Vrs. The Attorney General, Tanzanian Civil Suit No. 5/1993 (unreported).

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In the case of Environmental Action Net Work Ltd. (supra), the Applicant sought to enforce the rights of non-smoking members of the public to protect their rights to a clean and healthy environment.

- 10 That case is distinguishable from the instant case where there is a specific and defined group of affected people who are clearly listed in the pleadings. (See Annexure to the Applicant's affidavit). The said group of people interacted with the Respondents, Valuation of their properties was carried out and an offer for compensation was made.
- 15 The said offer was declined by the Applicant and his group as being inadequate.

A look at the prayers and allegations also has a lot to tell about the nature of this matter.

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The Applicants' claim that the 4th Respondent acquired the suit land by fraud.

Under Order 6 Rule 3 of the Civil Procedure Rules, where a Plaintiff seeks to rely on fraud, the particulars and dates must be stated in the pleadings.

5 Fraud must be specifically pleaded and proved. Ref: Dr. Adeodauta Kikitimwa Vrs. Edward Maudu Wakida CA 3/97. Therein it was held that “It is a cardinal principal that fraud cannot be presumed. It has to be proved strictly, and the burden being heavier than on a balance of probabilities and
10 fraud must reside in the transferee.”

In the instant case there was no claim of fraud in the pleadings. The overall observation is that all the matters raised in this Application cannot be adequately handled in an Application of this nature.

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The remedies that Article 50 (1) and (2) of the Constitution in my view are limited in nature and cannot cover what the Applicant requires in this Application. Section 19 of the Civil Procedure Act is to the effect that suits have to ordinarily be brought in the manner
20 prescribed by the Civil Procedure Act.

In exceptional circumstances, proceedings begun otherwise than by Plaintiff, the circumstances are usually clearly stated. These rules of procedure should be complied with. They are not mere technicalities

to hide under. Ref: Bhari Vrs. Khan (1965) E.A 95. The rules of procedure cannot be got rid of by a side wind.

The claims and prayers in this application require proof by evidence,
5 some of it by expert witnesses, production of records etc.

It is therefore dangerous to purport to adjudicate on the issues raised in this Application on the strength of the affidavits.

10 The materials therein is insufficient. Witnesses on various aspects cannot be availed for cross-examination and scrutiny.

This Court would not for example consider awarding General damages to an unspecified group of people without evidence as to
15 the nature of injury incurred, the quantity of damages envisaged and hence be able to determine the quantum of the said damages.

The Applicant is free to file an Ordinary Suit and if he wishes to act on behalf of his colleagues he can obtain the requisite order for
20 representative action under Order 1 Rule 8 of the Civil Procedure Rules.

For the reasons above, I decline to deal with the merits of this Application. It is improperly before this Court and it is dismissed with
25 costs to the Respondents as against the Applicant.

Godfrey Namundi

5 JUDGE

04/05/2015

04/05/2015:

10 Applicant in Court

Respondents absent

Galisonga for Applicant

Court: Ruling delivered.

15

Godfrey Namundi

JUDGE

20 04/05/2015