

THE REPUBLIC OF UGANDA
IN THE HIGH OF UGANDA HOLDEN AT KAMPALA
CIVIL DIVISION
HIGH COURT CIVIL SUIT NO. 165 OF 2015

EXCELLENT ASSORTED MANUFACTURERS LTD :::::::::: PLAINTIFF

Versus

UGANDA NATIONAL ROADS AUTHORITY ::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This ruling arises out of an application for judgment on admission made orally under O. 13 r 6 Civil Procedure Rules. At the hearing of that day, Mr. MacDusman Kabega, Mr. Were William and Mr. Asimwe Ronald appeared for the plaintiff and Mr. Ephraim Ntaganda, Ms Wantegy Monica and all directors represented the plaintiff company.

The brief background to this application is that the plaintiff, a Limited liability company engaged in the business of manufacturing of soap and detergents. In 2012, the plaintiff company claims to have embarked on an expansion plan to develop a large scale manufacturing facility for liquid soap, edible oil and detergents in line with its growth strategy. To that end they claim that they procured land and obtained a loan from the European Investment Bank. They also obtained architectural plans for which they partly paid and also paid for motor vehicles. The plaintiff further claims that while in the process of procuring the permits, approvals and equipment, the Gazette came out and the defendant compurisorily acquired the property. On the 17th day of June 2015, the plaintiff filed a suit in this court for compensation for compulsory acquisition of its land in Busega, loss of business, general damages, interest and costs of the suit.

When the suit came up for mention, parties were given an opportunity to try and settle this case out of court and they embarked on doing evaluations. Later on, an evaluation by the Chief Government Valuer was got which the plaintiff claimed at the hearing of the suit to have

amounted to an admission. It was on that basis that learned counsel for the plaintiff made an application for judgment on admission.

The admissions by the respondent on which this application is based are as set out by learned counsel for the plaintiff as contained in paragraph 10 of the Written Statement of Defence wherein they admit the contents of the letter referred to in paragraph 4(c) of the plaint. In the said letter, the defendants are said to have undertaken to compensate the plaintiff. That therefore they are liable and the only thing that remains is determination of quantum of compensation which is in issue.

Learned counsel for the plaintiff also submitted that in terms of O. 13 r 6 Civil Procedure Rules, judgment on admission can be entered in favour of the plaintiffs. That paragraph 10 in the Written Statement of Defence is unambiguous admission of facts in the pleadings of the plaintiff. Further that the value of developments is spelt out in annexure 'J' to the plaint which is a letter dated 27th April 2015 written on behalf of the Permanent Secretary Ministry of Lands Housing & Urban Development. That on the last paragraph, they came up with a valuation in paragraph 'q' of actual developments and compensation figure.

Learned counsel for the plaintiff then prayed for judgment on admission in the terms of O. 13 r 6 of the Civil Procedure Rules for the recommended amount plus interest. He referred this court to the case of ***Jane Ssenyonjo Vs Jonathan Bunjo HCCS 180 of 2012***. That this does not affect the valuation waited for the entire land which would include loss of land.

In reply, learned counsel for the defendants submitted that he was surprised by the position taken by learned counsel for the plaintiff in applying for judgment when court directed for valuation of the property in question. He also submitted that he objects to the application and referred to it as an ambush.

Learned defence counsel submitted that their pleadings are clear showing that they contest the title of the plaintiff and the paragraph cited by learned counsel for the plaintiff was pleaded in the alternative. That paragraph 10 which the plaintiff refers to was made in specific reply to

paragraph 4(1) of the plaint and described the plaintiff's claim as baseless and untenable. He further submitted that paragraph 10 cannot be relied upon to found an application for judgment on admission because by the words "actual developments that existed before" renders para 10 ambiguous since it does not precisely state or specify any particular developments. That the attempt by learned counsel for the plaintiffs to deduce the alleged actual developments from the Chief Government Valuer's report and read them into para 10 is misguided and an attempt to mislead court since the entire Chief Government Valuer's report is disputed by the defendant in para 11 of the Written Statement of Defence.

Learned counsel for the defendant further submitted that this is a clear indication that paragraph 10 is ambiguous and cannot stand alone to sustain the application for judgment on admission. That the case of *Jane Senyonjo Vs Jonathan Bunjo* (supra) held that the admission has to be clear and unambiguous and precise. That there are no precise developments referred to in paragraph 10. Further that the facts of Jane Senyonjo case supra are distinguishable from the instant case because in that case parties had scheduled and facts had been admitted. That the present case is not yet scheduled.

Learned counsel also submitted that the parties are carrying out an exercise to establish if there were any developments that should be compensated and the defendant under paragraphs 11 and 14 of the Written Statement of Defence is challenging the compensation assessments in the report of the Chief Government Valuer. Therefore the sums contained in the report cannot be a basis to enter a judgment since they are denied for being unlawful, irregular and unenforceable, extortionate in nature and orchestrated for purposes of fleecing the defendant or the tax payers' money.

Learned counsel also submitted that the application for judgment on admission of various claims of primary land take of shs 503,000,000/= out of severance and the amount of shs 1,100,800,000/= and other claims are clearly not admitted by the defendants and are misconceived. Further that paragraph 10 of the Written Statement of Defence partly quoting from the letter of 14th July 2014 must be read in context of the entire letter because paragraphs 3 of that letter which is annexure 'F' states that the basis for the claim was found to be untenable since it was premised on loss of business because of UNRA's interference without any prior

proof of existing business at the time of SI 7 of 2013 Land Acquisition for the Kampala Expressway Instrument.

Learned counsel also cited **Central Electrical International Ltd Vs Eastern Builders & Engineers Ltd MA** wherein Mukasa J held *inter alia* that obtaining judgment on admission is not a matter of right but was a matter of exercise of Judicial discretion regard being had to all the circumstances of that case. Therefore learned counsel invited this court to exercise its discretion judiciously by looking at the entire case and the defendant's letter dated 14th July 2014. That only developments that were on the land before the gazette would be compensated and that there were no developments in place before the gazette came out because the title was granted to the plaintiffs only after the gazette had come out and the land acquired by the government.

Lastly learned counsel for the defendant submitted that the defendant pleads illegality in its defence in paragraph 6 of the Written Statement of Defence and prays in paragraphs 4-9 that the whole suit discloses no cause of action because the suit land is in a wetland which cannot be owned except with NEMA approval. That the illegality overrides all pleadings and the alleged admission in this case is not the kind envisaged in O. 13 r 6 of the Civil Procedure Rules. Learned counsel prayed that the application be dismissed with costs. That they intend to raise a preliminary objection.

In rejoinder, Mr. Were William submitted in disagreement with the submissions by the defence. That under paragraph 10 of the Written Statement of Defence specifically paragraphs 5 of the letter annexed thereto the defendant unequivocally admits liability and undertakes to compensate the plaintiff. That this defeats all submissions of learned counsel for the defendants which are afterthought. Learned counsel further submitted that each paragraph in the Written Statement of Defence is a pleading and so learned counsel for the defendant cannot be allowed to use paragraph 7 to defeat paragraph 10 of its own pleading. That such submission was intended to mislead court.

Referring to paragraph 7(3) of the Written Statement of Defence, learned counsel submitted that by the time the defendant undertook in the Written Statement of Defence to stand by the letter of

14th July 2014, it was aware of the existence of a strip map and by the time of the letter they were aware that there was a gazette and Statutory Instrument as well as the plaintiff on land. Therefore after all this the defendant cannot deny paragraph 10 and the letter. That the submission on illegality is only intended to delay the plaintiff from benefiting from the compensation previously communicated.

Regarding the issue of the Chief Government Valuer's report, learned counsel submitted that if court does not deem it fit to award the sums prayed for, it should find that the defendant has admitted liability and what will remain is the court to engage an expert to advise court on the terms.

I have carefully considered the submissions by respective counsel regarding whether or not this court should enter a judgment on admission against the defendant. I have also considered the law applicable and the authorities cited by both sides.

The law on judgments on admission is provided for under O. 13 r 6 of the Civil Procedure Rules where it provides that any party may at any stage of a suit, where an admission has been made, either on the pleadings or otherwise, apply to the court for such judgment or orders as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order; or give such judgment, as the court may think just.

From the wording of the above provision of the law, an admission may be express or may arise by implication from non-traverse of a material fact in the statement of claim. However, the admission has to be clear and unambiguous and must state precisely what is being admitted in order for a judgment on admission to be in order. See: **Ssenyonjo Vs Bunjo HCCS 180 of 2012** per Bashaija J

It is also important to emphasize that for judgment on admission to be entered such judgment must be explicit and not open to doubt as was held in **John Peter Nazareth Vs Barclays Bank International Ltd [1976] EA 39.**

An admission is a statement in which somebody admits that something is true especially something wrong or bad that they have done.

In the instant case, in its Written Statement of Defence paragraph 10 thereof, the defendant pleaded thus:

“further in answer to the contents of paragraph 4(i) the defendant avers and contends that the contents of the letter dated the 14th day of July 2014 were correct and stands by the contents of the said letter that only actual developments that existed before the land was gazetted will be compensated for”.

The said letter is annexed as ‘F’ to paragraph 4(i) of the plaint to which paragraph 10 of the Written Statement of Defence refers. Specifically the paragraph in dispute state that:

“.....the purpose of this letter is to inform you that UNRA undertakes to compensate you for all the property acquired for the road building purposes such as land including that under diminution and developments that existed before the land in question was gazetted. We therefore urge you to report to our compensation consultant M/s Mott Macdonald Ltd for verification and disclosure for compensation”.

The letter was signed by the Director Planning.

The above quoted letter is in clear terms which do not require a strained interpretation. The letter unequivocally admits liability and undertakes to compensate the plaintiff. The undertaking is however limited to compensation for developments which were on the land before the date of the gazette which was 8th February 2013 as per annexure “D” of the Written Statement of Defence. I therefore agree with the submissions by both learned counsel for the plaintiff that this is a proper case for entry of a judgment on admission without waiting for the determination of any other question between the parties.

Judgment on admission is entered in favour of the plaintiff but I do not find it just to order the defendant to pay the sums proposed by the Chief Government Valuer’s report which has to await

the valuation process that was ordered by this court before this application. The said report should be made to this court as well.

Accordingly, the defendant is liable to compensate the plaintiff for land compulsorily taken over as admitted and the developments which were there before 8th February 2013.

The defendant shall pay the plaintiff the costs of this application.

I so order

Stephen Musota

J U D G E

26.10.2016