

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

**1. MISC. CAUSE NO. 0008 OF 2021**

**UGANDA NATIONAL ROADS AUTHORITY ::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**PROF. NDUNGUTSE DAVID ::::::::::::::::::::::::::: RESPONDENT**

**AND**

**2. MISC. CAUSE NO. 0009 OF 2021**

**UGANDA NATIONAL ROADS AUTHORITY ::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**BARAREMWA EDWARD ::::::::::::::::::::::::::: RESPONDENT**

**CONSOLIDATED**

**RULING**

**BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA**

[1] The Uganda National Roads Authority (hereinafter referred to as the Applicant) filed these 2 applications against **Prof. Ngungutse David** and **Bareremwa Edward** (hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively) by Notice of motion under *Section 33 of the Judicature Act, Section 98 Civil Procedure Act, Section 6(5)(b) of the Land Acquisition Act and Order 52 rules 1 & 2 Civil Procedure Rules* seeking for the following orders;

- a. That the Applicant deposits in court all the compensation sums for land required for construction of the **Buhimba – Kakumiro road project**.
- b. The Applicant be allowed to proceed with the construction works on the acquired land.
- c. Costs of this application be provided for.

- [2] The applications are premised on grounds contained in the affidavits of **Isaac Kawombe**, a land valuer at **Uganda National Roads Authority** (UNRA) attached to **Buhimba – Kakumiro road project** which briefly are:-
- a. That the Applicant Authority is constructing the **Buhimba – Kakumiro road project** and in so doing, it is desirous of acquiring land at **Kabale – Kyabichwe in Kikuube District** owned by the Respondents.
  - b. That before the commencement of the said road project, the Applicant carried out a valuation of all properties within the designated right of way as obliged under the law in order to compensate the project affected persons (PAPS).
  - c. That for the 1<sup>st</sup> Respondent's case, the Applicant assessed and valued his land measuring approximately 1.865 acres and returned a figure of **UGX 9,597,900/-** while for the 2<sup>nd</sup> Respondent, the Applicant assessed and valued his land measuring 3.634 acres and returned a figure of **UGX 19,464,900/-**.
  - d. That however, when the assessed sums for the affected persons were communicated to the Respondents, they declined to receive it arguing that the said sums were low albeit with no contrary valuation report.
  - e. That the Applicant holds a sum of a total of **UGX 29,062,800/-** for the suit land and is ready and willing to pay it out to the Respondents and proceed with the civil works on the acquired land but has been constrained by the Respondents' refusal.
  - f. That the delay to acquire the suit land has cost the Applicant in time delays and associated costs and if this application is not granted the Applicant and Government at large will continue losing **USD 38,000**, an equivalent of **UGX 136,800,000/-** for each day the project is further delayed.
- [3] On their part, the Respondents contend that in 2015, the Government of the Republic of Uganda commissioned a project to construct **Buhimba –**



**Kakumiro road** and the project was implemented by the Applicant. The construction of the aforesaid road necessitated acquiring land, the Applicant initiated a process to obtain the same through compulsory land acquisition and as a result, their respective lands were affected by the road construction. They disputed the assessed value of their respective lands and contend, that the Applicant's attempt and threats to take over their land without first paying them fair and adequate compensation is violation of their constitutional rights to own property.

- [4] The Respondents deponed further that the Applicant never followed the procedure laid down in the ***Land Acquisition Act***, hence they were never notified of the acquisition and that they were never invited for a valuation hearing by an Assessment officer. That a fair market value of their land can only be arrived at by considering the value of **Rock** on the land and the Applicant's refusal to consider it deprives them of fair and adequate compensation. Due to the Applicant's unwilling to fairly compensate them for the value of their land, they filed **Civil Suits No. 11 & 10 of 2021** respectively against the Applicant and the suits are pending in court.

**Counsel legal representation and submissions:**

- [5] The Applicant is represented by **Mr. Mutatiina Pecos** of **Uganda National Roads Authority** while the Respondents are represented by **Mr. Frank Tumusiime** of **M/s Frank Tumusiime & Co. Advocates**, Kampala. Both Counsel filed their respective written submissions as was directed by this court in regard to the 2 consolidated applications.
- [6] Counsel for the Applicant submitted that the land in question has already been compulsorily acquired for road construction and the Respondents' interest is only limited to compensation. That therefore, granting the orders sought herein will not prejudice the Respondents in any way. That 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 as beneficiaries, to be curtailed by the Respondents' unreasonableness.

- [7] Counsel submitted further that the Respondents' refusal to accept the Applicant's awarded compensation is hinged on the fact that the Applicant did not consider the value of the **rock** on the Respondents' land while carrying out the valuation of the affected land. He argued that whereas the Respondents' pieces of land have rocks on them, they have no right whatsoever to claim for compensation over the same without a licence from Ministry of Energy authorizing them to commercially use the same. He referred to **Sections 3 & 4(2) of the Mining Act** which provides that ownership of minerals is vested in Government and no person is expected to explore or prospect for, or retain or mine or dispose of any mineral in Uganda except under, or in accordance with a licence issued under the **Mining Act**. That the Respondents have not furnished the Applicant with such licence in order to justify their claims for compensation of the rock, which under **Section 2 of the Mining Act** are minerals with the meaning of the Act, he referred this court to the following authorities to support his argument;

1. WELT MACHINEN ENGINEERING LTD VS. CHINA ROAD & BRIDGE CORP. & 2 ORS. H.C.C.S NO. 16 OF 2014.

2. CHINA ROAD & BRIDGE CORP. VS. WELT MACHINEN ENGINEERING LTD CIVIL APPEAL NO. 52 OF 2017 (C.A).

- [8] Counsel for the Respondents on the other hand submitted as follows:

1. There is a petition filed in the Constitutional Court; OMARA DANIEL & 2 ORS. VS. A.G & UNRA CONSTITUTIONAL PETITION NO. 126 OF 2021 challenging the constitutionality of **Sections 6(5)(a)(b) & (c), 10(3)(4)(5)(c)(d) and 15(1) & (2) of the Land Acquisition Act Cap 226**, that depositing of money into court before arriving at and

before payment of a fair and adequate compensation to property owners as being inconsistent with objective XIV of the National objectives and Directive principles of State policy, **Article 26, 28 and 274 of the Constitution of the Republic of Uganda**. That for this reason, the instant application ought to be referred to the Constitutional Court.

2. That the Applicant seeks to deposit in court compensation sums and carry on with the developments on the land but it smuggled into these proceedings matters that have not been pleaded i.e. the issue of whether rocks are minerals and whether the Applicants are entitled to compensation if any, which was not the subject of the application thus a departure from the pleadings filed before court, a violation of **Order 6 rules 6 & 7 Civil Procedure Rules**. He relied on the authority of **SIRAJI BAGEYA & 2 ORS. VS. OCHIENG DAVID (CIVIL APPEAL NO. 130 OF 2009)**. Additionally that these are issues that are set to be determined in the main suit. He implored court to disregard the said submission.
3. That the Respondents in order to safeguard their property filed **C.S No. 11 of 2021 and 10 of 2021** against the intended unlawful actions of the Applicant that sought to offer them unfair and inadequate compensation and further deprive them of their property. That therefore, if court should order that the compensation sums be deposited in court and that the Applicant subsequently takes possession of the suit land, the Respondents' suit in court would be rendered nugatory thereby defeating the Respondents' right to access court for redress as enshrined under **Article 26(2)(b)(ii) of the 1995 Constitution of Uganda**.

[9] Consequently Counsel for the Respondents proposed the following issues for determination of this application;



1. Whether this court can go on to determine this application when there is a pending petition in the Constitutional Court on a similar matter.
2. Whether the application raises questions for constitutional interpretation.
3. What remedies are available to the parties.

ISSUE NO. 1 and 2:

**Whether this court can go on to determine this application when there is pending petition in the Constitutional Court on a similar matter and whether the application raises questions for constitutional interpretation:**

[10] In his submissions, Counsel for the Respondents submitted citing the pending **CONSTITUTIONAL PETITION NO. 16 OF 2021; OMARA DANIEL & 2 ORS. VS. ATTORNEY GENERAL & ANOR.** that the issues for interpretation raised therein are on all fours with the present application. In my view, then, it is unnecessary in this application to frame questions for constitutional interpretation when similar questions are already pending before the Constitutional Court. To do so and referring the matter to the Constitutional Court would in the circumstances, be to unnecessarily clog the Constitutional Court with matters with similar constitutional questions for determination. As a result, I find this application not raising any new issue or question for constitutional interpretation and therefore, it does not require to be referred to the Constitutional Court since similar questions, as stated, are already pending before the court.

[11] As regards the Applicant basing its entire submissions on the issue of whether the Respondents are legally undertaking **rock extraction** and whether **rock** is a mineral as per the law, I find that Counsel for the Applicant, though the issue or facts of the **rock** did not form any part of

the Applicant's pleadings, he was entitled to submit on the same because in the affidavit in reply by the Respondents, they based their refusal of the awarded compensation on the rocks in their respective pieces of land which the Assessment officer ignored or refused to include in the assessment exercise. Counsel is therefore responding to the Respondents' affidavit in reply that raised the issue of rocks.

[12] On the issue of the Respondents pending Civil Suits challenging the Applicant's compulsory acquisition of their property, mode of assessment of their properties and the compensation, it is my view that the results of this application do not either pre-empt, or in any way prejudice the suits. Compulsory acquisition of property under the law does not affect or fetter the rights of the Respondents or any other person to access a court of law for any redress. Under **Article 237(2)(a) of the Constitution of Uganda**, the Government or Local Government may, subject to **Article 26 of the Constitution**, acquire land in the public interest and the conditions governing such acquisition shall be as prescribed by Parliament.

[13] **Article 26** provides that:

*"1. Every person has a right to own property either individually or in association with others.*

*2. No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied;*

*a. the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and*

*b. the compulsory taking of possession or acquisition of property is made under a law which makes provision for;*

*i. prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property; and*



*ii. a right of access to a court of law by any person who has an interest or right over the property.*

[14] In the instant case, the compulsory taking of possession or acquisition of the Respondents' land was made under the ***Land Acquisition Act Cap 226***. Under ***Section 6 of the Act***, the Assessment officer, the Government valuer is given the mandate to hold an inquiry into the claims and objections in respect of the land to be acquired by the Government and make an **award** i.e. the compensation which in his or her own opinion should be allowed for the land. Under ***Section 6(4) of the Act***, the compensation award of the Assessment officer/Government valuer is deemed a fair and adequate compensation for the property in question. In case of a dispute of the award as it is in the instant case, the aggrieved/dissatisfied party has a right to appeal against the award under ***Section 13 of the Act***. The appeal is on any or all the following:

- a. The total amount of the compensation awarded.
- b. The apportionment of the compensation.
- c. Any failure or refusal of the assessment officer to include his or her in the apportionment.

[15] In this case, the Government is on a project of constructing the **Buhimba – Kakumiro road**, the project is intended to affect land at **Kabale – Kyabichwe in Kikuube District** owned by the Respondents. Pursuant to the intended road construction, the Applicant carried out a valuation of all properties within the designated right of way as obliged by the ***Land Acquisition Act*** in order to compensate the project affected persons (PAPS). The Assessment officer valued the Respondents' land measuring 1.865 acres and 3.634 acres respectively and retained a figure of **Ugx 9,597,900/-** for the 1<sup>st</sup> Respondent and **Ugx 19,464,900/-** for the 2<sup>nd</sup> Respondent. Both Respondents rejected the awards for being low and that the **Assessment officer** ignored and or refused to consider the rock



in the land during the valuation exercise. On the other hand, the Applicant holds a sum of a total of Ugx 29,062,800/- for compensation of the Respondents' property and is ready and willing to pay it out to the Respondents. The project in question is for public use.

- [16] In the Respondents' affidavit in reply, they deponed that a geological valuation and feasibility study report of the suit land was prepared to capture the decisions of the parties regarding valuation and compensation.
- [17] I have perused the evaluation and feasibility report by a one **Ssebanakitta Michael**, an Exploration Geologist. The report fell short of expressing or stating a definitive figure value of the 'rock' in question which is the centre of the dispute as it is the sole reason given for the Respondents' refusal of the Assessment officer's award. In short, the Respondents have failed to show their own alternative figure that is deemed fair and adequate compensation. The value of 20bn shillings stated by Counsel for the Respondents during submissions has no basis. The figure does not arise from any valuation report. It appear merely speculative.
- [18] Secondly, none of Respondents has indicated dissatisfaction of the award by invoking *Sections 65 and 13 of the Land Acquisition Act* by preferring an appeal to the High Court as an aggrieved person against the awards made by the Assessment officer. They have however filed their respective suits in the High Court, **H.C.C.S No. 11 and 10** respectively. The Respondents are at liberty to access courts of law and pursue the determination of their claims concerning the adequacy of the compensation sums through any approach of their choice, since the adequacy of compensation cannot be determined by this application.
- [19] It is the view of this court therefore that the award by the Assessment officer as mandated by the law is deemed a fair and adequate



compensation under compulsory acquisition under the ***Land Acquisition Act*** for acquisition of land necessary, for example public use like in the instant case, where it is for a government road construction project. The award does not necessarily have to be a fair market valuation which is arrived at on a **willing seller, willing buyer** basis as is envisaged, for example under the ***Land Act Cap 227, Section 41(4)(b) and 6 of the Act*** where land is not acquisitioned for a public use. In the present case where land is compulsorily acquisitioned for public use, the compensation award is based on a fair market valuation as arrived at by the Assessment officer.

- [20] As was observed in the case of **UNRA VS. FARIDAH NANTALE & 6 ORS., H.C.M.A NO. 35 OF 2018** quoting Mwangusya Eldad J.A in **EUTAW CONSTRUCTION CO. INC. & ANOR. VS. UNRA, CONSTITUTIONAL APPLICATION NO. 047 OF 2014**,

*“The petition raises constitutional violations which have already been committed. An interim injunction would not be the proper remedy but a full trial would establish the remedies available for breach of contract and the fundamental rights allegedly violated. When all this is going on the project which is for the benefit of the community should be allowed to continue.”*

- [21] Court in **UNRA VS. FARIDAH** (supra) also observed that courts have taken the view that Government projects which are for the benefit of the public should not be blocked if the issues raised do not concern retention of the land.

- [22] In view of the foregoing, I conclude that this court can go on to determine this application when there is a pending petition in the Constitutional Court on a similar matter since this application raises no new questions for constitutional interpretation. The relevant questions for constitutional interpretation are already pending before the Constitutional Court in **OMARA DANIEL & ORS. VS. A.G & ANOR.** (supra).



### ***What remedies are available to the parties***

- 3] It is the contention of the Applicant that when the Respondents refused payment of the assessed compensation awards, the Applicant could not commence the construction of the road under the project in question because of the requirement that there has to be prior payment of the compensation to the Respondents. As a result, the delay to acquire the suit land has cost the Applicant in time of delays and associate costs where government loses **USD 38,000** an equivalent of **Ugx 136,800,000/-** for each day the project is further delayed.
- [24] The Applicant as a result, seek to deposit in court all compensation sums for the land required for the construction of the **Buhimba – Kakumiro road project** and be allowed to proceed with the construction works on the acquired land.
- [25] Under ***Section 6(5) of the Land Acquisition Act*** where a person awarded compensation refuses to accept payments or any other circumstances which render it inexpedient, difficult or impossible to make payment in accordance with the award, the High Court may order payment to be made into court on such conditions as it thinks appropriate. In this case, the Respondents disputed the award and refused to accept payments. They have in addition filed suits challenging the acquisition of their respective lands. I find that the deposit of the assessed sum for compensation of the Respondents in court does not restrain or fetter the Respondents from pursuing or accessing courts for their rights regarding the suit land.
- [26] I therefore allow this application with orders:-
1. That the Applicant is allowed to deposit in court the assessed compensation sum total of **UGX 29,062,800/-** for the benefit of the Respondents.

2. The Applicant on payment of the compensation sum in court is allowed to proceed with the construction of **Buhimba - Kakumiro road** construction works on the acquired land.

3. Each party shall bear his/its own costs of this application.

Dated at **Masindi** this 7<sup>th</sup> day of SEP, 2021.

  
Byaruhanga Jesse Ruggyema  
**JUDGE**