

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISC. APPLICATION NO. 0095 OF 2020
(ARISING FROM CIVIL SUIT NO. 0043 OF 2019)

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

VERSUS

1. NAKABBA SCOVIA	}	::::::::::::::::::::::::::::::::: RESPONDENTS
2. MUGABI FRED		
3. MWESIGWA PATRICK		
4. TUSUBIRE ANDREW		
5. KYALIGONZA GEOFFREY		
6. BASALIZA DEOGRATIUS		
7. HARRIET TIBULIWA		

RULING

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] This is an interpleader application brought by **Uganda National Roads Authority** (hereinafter referred to as the Applicant) against **Nakabba Scovia and 6 others** (hereinafter referred to as Claimants/Respondents) brought under *Order 34 rules 1 & 2 of the Civil Procedure Rules* and *Sections 59 and 98 Civil Procedure Act* seeking for the following orders;
- a. That the Applicant deposits in court, **UGX 105,505,140/-** being compensation sums in respect to land situate at **Kiweza, Kasambya Sub county, Kakumiro District** acquired for purposes of construction of the **Buhimba - Kakumiro road project**, being claimed by the Claimants or that court directs the Applicant as to how the said compensation sum should be disposed of.
 - b. That 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 or damages potentially arising out of the same actions.

- c. That the Applicant be allowed to proceed with construction on the acquired right of way for the Buhimba – Kakumiro road project, on the above described land.
- d. That costs of this application be provided for.

[2] The application is supported by the affidavit of **Nambi Irene**, a surveyor with the Applicant wherein the grounds in support of the application briefly are:

- i. That the Applicant is currently undertaking the process of construction of the **Buhimba – Kakumiro road project** in line with its statutory mandate under the *Uganda National Roads Authority Act 2006*, and during the process of land acquisition for the project earmarked land situate at **Kiweza, Kasambya, Kakumiro** District that would be affected by the project.
- ii. That the Road project land is being claimed by all the Claimants, and the affected portion was valued at **Ugx 105,505,140/-** (One hundred and five million, five hundred and five thousand, one hundred and forty shillings only) which sum the Applicant currently holds but is constrained in determining who the rightful beneficiary of the same is.
- iii. That all the Claimants claim an interest in the suit property as owners thereof and that there is a **Civil Suit No. 43 of 2019** pending before this Honorable Court in respect of the same land.
- iv. That the Applicant is at a substantial risk of losing colossal sums of tax payers' money in delay damages payable to the contractor on the Road project for each day that the Applicant does not accord it site for construction while the dispute of ownership of the land persist.
- v. That 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 to the detriment of the Government of Uganda and the tax payer.

- vi. That the Applicant claims no interest in the compensation and that there is no collusion between the Applicant and any of the Claimants.
- vii. That it is just and equitable that in the interest of justice, a public project that carries with it potentially immense benefits for all Ugandans citizens should not be curtailed by the dispute of the Claimants, the application be granted.

[3] With the consent and authorization from the 2nd, 4th, 5th, 6th and 7th Claimants/Respondents, the 3rd Claimant/Respondent deponed on their behalf that it is true the Applicant is currently undertaking the process of construction of the **Buhimba - Kakumiro road project** in line with its mandate and part of the land affected at **Kiweza, Kasambya in Kakumiro District** is a subject of **H.C.C.S No. 43 of 2019 at Masindi** wherein they contest ownership. As a result, the 2nd - 7th Claimants/Respondents do not object the said valued sum for the project road land being deposited in this Honorable court pending the determination of the pending suit and that they do not also object to the commencement of the road project by the Applicant.

[4] The 1st Claimant/Respondent, **Nakabba Scovia** whose name the valuation report of the Road project reflected as the owner and whose ownership is disputed by the 2nd - 7th **Claimants/Respondents** filed her independent affidavit in reply recognizing the existence of a dispute over the Road project land and **H.C.C.S No. 43 of 2019** by stating that court dismissed **Misc. Applications Nos. 100 and 101 of 2019** both arising from **H.C.C.S No. 43 of 2019** wherein the 2nd - 7th **Claimants** were seeking orders restraining the 1st Claimant from, inter alia, receiving compensation from **Uganda National Roads Authority (UNRA)**, the Applicant herein.

[5] Lastly, that the **2nd, 3rd and 4th Claimants** stated on oath in their **witness statements** in **Hoima Chief Magistrate's Court C.S. No. 58/2017**, a suit between her, the **1st Claimant** and the **2nd Claimant** over the Road project suit land that the land belonged to the **1st Claimant's** late mother **Suzana Nalugwa** to whom she is the rightful beneficiary and a holder of Letters of administration and therefore the rightful beneficiary to receive compensation from UNRA.

[6] In essence, the **1st Claimant** appeared to merely justify the Applicant's valuation report on the Road project land for indicating her as the sole rightful beneficiary which in my view is for the merits of the pending High Court **C.S No. 43 of 2019**, which is to decide who the rightful beneficiary/owner of the land is. She did not address the merits of this application.

Counsel legal representation and submissions:

[7] The Applicant is represented by **Ms. Suzanne Aisia** of the **Applicant Directorate of legal services**, Kampala while the **1st Claimant** is represented by **Mr. Shaban Sanywa** of **M/s Sanywa, Wabwire & Co. Advocates**, Kampala, while the **2nd - 7th Claimants** are represented by **Mr. Nkwasiwe Robinson** of **M/s Kasumba, Kugonza & Co. Advocates**, Kampala. All the respective Counsel filed written submissions in support of their clients' cases as permitted by court.

[8] Counsel for the Applicant submitted that the suit land being expropriated for the construction of the **Buhimba - Kakumiro road project** has been valued at **Ugx 105,505,140/-**, a sum the Applicant holds and for which he claims no interest except for charges and costs.

[9] That the Applicant is obliged to pay compensation to the owner of the suit land before acquiring the same but in this case, there are **7 Respondents** claiming adversely to one another the said sum from the

Applicant. The Applicant is willing to pay the said sum but is in dilemma as to who to pay because of the Claimants/Respondents' disputing over the suit land.

[10] It is for the above reason that the Applicant seek to have the compensation amounting to **Ugx 105,505,140/-** deposited in court pending the resolution of the dispute or in the alternative to have this court make a pronouncement on who the rightful beneficiary of the compensation is.

[11] Lastly, it is contended by the Applicant that there is no collusion whatsoever between the Applicant and any of the Claimants.

[12] On the other hand, Counsel for the 1st Claimant/Respondent submitted that there is no claim for compensation by the Claimants pending in court to merit interpleader application. Secondly, that the 1st Claimant/Respondent is in possession, occupation and utilization of the suit land and as a result, the Applicant would only have no interest in the said sum if it had taken possession, occupation and utilization of the land.

[13] As for the 2nd – 7th **Claimants/Respondents**, their Counsel reiterated the 2nd Claimant/deponent position in reply, not objecting to the application.

Decision of court:

[14] This application for interpleader is majorly seeking for an order that the Applicant deposits in court **Ug. Shs. 105,505,140/-** being compensation in respect to land situate at **Kiweza, Kasambya Sub county, Kakumiro District** acquired for purposes of construction of the **Buhimba - Kakumiro Road project**, being claimed by the 7 Claimants or that court directs the Applicant as to how the said compensation sum should be disposed of.

[15] The application was prompted by the fact that upon acquisition of the suit land by UNRA for a road project, the Claimants disputed among

themselves ownership of the suit land and as a result, the Applicant could not pay out the compensation until the rightful beneficiaries/owners of the land are known. The issue of acquisition of the land for road construction and the quantum of compensation for the owners of the suit land is settled and therefore not in dispute. What is in dispute is who are the rightful beneficiaries or owners of the suit land and this seems only to likely be resolved in or by the pending H.C.C.S No. 43 of 2019.

[16] The issues for determination in this application appear therefore to be **whether the Applicant's application merits interpleader proceedings and if so, the remedies for the parties.**

[17] The law in interpleader proceedings provides that where two or more persons claim adversely to one another the same debt, sum of money or other property movable or immovable, from another person, who claims no interest therein other than for charges and costs and who is ready to pay or deliver it to the rightful defendant, such other person may institute a suit of interpleader against all Claimants or where a suit dealing with the same subject matter is pending, may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom payments or delivery shall be made, and of obtaining indemnity for himself provided that where any suit is pending in which the rights of all parties can be properly decided, no such suit of interpleader shall be instituted (*Section 59 Civil Procedure Act*).

[18] Where there is therefore, a pending suit, such suit must be dealing with the same subject matter as claimed in the interpleader application. Interpleader proceedings are instituted by originating summons and where there is a suit, it may be instituted by Notice of motion.

[19] In the instant case there is a pending suit vide H.C.C.S No. 43 of 2019 (hereinafter referred to as the **head suit**). The head suit is between 2nd –

7th Claimants (as plaintiffs) and the **1st Claimant** (as Defendant) whereby the **2nd – 7th Claimants** are claiming ownership of a kibanja measuring 20 acres in **Kiweza village, Kakumiro District** as beneficiaries of the late **Tamale Evaristus Ssali**, the father of all the Claimants. The **1st Claimant** is contending that she is the rightful Claimant of the suit land and that the same does not form part of the estate of **Tamale Evaristus Ssali** but forms part of the estate of her late mother **Nalugwa Suzana**.

[20] In **paragraphs 5 & 6 of the plaint**, the **2nd – 7th Claimants/Plaintiffs** averred that in 2018, when UNRA began the road expansion work in **Kasambya village, Kakumiro District**, all property owners in the area were to register themselves for purposes of **compensating** of all those who would be affected by the road construction. That however, without consultation of the family members of the late **Tamale Evaristus** the Defendant registered herself as the sole owner of the suit land in a bid to receive the compensation. The **1st Claimant/Defendant** on the other hand averred in her Written statement of defence that she is entitled for the UNRA road compensation but that the **2nd – 7th Claimants/Plaintiffs** unjustifiably and segregatively halted the payments.

[21] The head suit is still pending in court. However, whereas this head suit would decide the rights of the Claimants/Respondents in the interpleader application, it would not decide the rights of the Applicant who was not made a party to it. As a result, I find that upon the Applicant's acquisition of the suit land and assessment and determination of the compensation payable to the rightful beneficiary or owner of the suit land, the Applicant is entitled to bring this application by Notice of motion for determination of the sought orders pending the determination of the rightful beneficiaries/owners of the suit land entitled to receive the compensation in the head suit. It was a result of the wrangles among the Claimants over the suit land that the Applicant

could not pay out the compensation. It is therefore logical that the head suit (C.S No. 43/2019) first determines who the rightful beneficiary of the suit land is since the Claimants' claims are adverse to each other yet the Applicant is ready and willing to pay out the compensation.

[22] According to Counsel for the 1st Claimant, the subject matter in the interpleader proceedings is **compensation** while in the head suit, it is **land**. I don't think that is the correct position.

[23] *Section 59 Civil Procedure Act* require an existing suit to be dealing with the same subject matter as the subject matter in the interpleader proceedings. In this case, I find that the subject matter of the head suit between the 2nd - 7th **Claimants** and the 1st **Claimant** and the subject matter of the interpleader proceedings between the **Applicant** and the **Claimants** to be the same because they both arise from one set of transactions, Applicant's acquisition of land and payment of compensation to the beneficiaries/owners of the land. The sole issue in both matters is **who is the rightful beneficiary/owner of the suit land to be entitled to receive the compensation sum.**

[24] It follows therefore, that resolving the issue of who is the rightful owner of the suit land in the head suit would resolve the issue of the rightful beneficiary for the compensation sum in interpleader proceedings.

[25] As regards whether the Applicant UNRA has any interest in the compensation sum, it is my view that upon acquisition of the suit land and determination of the payable compensation to the beneficiary or owner of the suit land, then the Applicant ceased to have any interest in the compensation sum irrespective of whether it took possession, occupation or utilization of the land. The land in question was acquisitioned upon determination of the payable compensation following the relevant procedures under the *Land Acquisition Act Cap 226*. It is

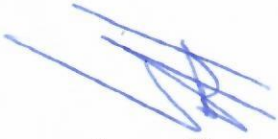
therefore not correct to say that the Applicant would only have an interest in the said sum if it had taken possession, occupation and utilization of the land. The acquisition of the land by the Applicant is not, whatsoever under any contestation.

- [26] In conclusion, I find that the Applicant acquired the land situate **Kiweza, Kasambya Sub county, Kakumiro District** for purposes of construction of **Buhimba - Kakumiro road project**. The portion of this land, now being claimed by all the Claimants was valued at **Ugx 105,505,140/-** and the Applicant is currently holding the sum of money for compensation of the rightful beneficiary/owner of the land. All the Claimants/Respondents claim interest in the suit land are disputing over the ownership of the same. As a result, the Applicant is in dilemma as to who is the rightful beneficiary/owner of the suit land to be entitled to payment of the compensation sum.
- [27] The Applicant therefore filed the present interpleader application to deposit in court the compensation sums in respect of the suit land pending disposal of the head suit, **C.S No. 43/2019** that will determine the rightful beneficiary/owner of the suit land. The Applicant holds the compensation sum in which it claims no interest and it is willing to pay it into court or to deal with it as court may direct.
- [28] In the premises, I find that the Applicant's application merit interpleader proceedings. It is competent before this court and it is accordingly granted with the following orders:-
1. The Applicant deposits in court **Ugx 105,505,140/-** being compensation sums in respect to land at **Kiweza, Kasambya Sub county, Kakumiro District** being claimed by the Claimants, but acquired by the Applicant for purposes of **Buhimba - Kakumiro road project**, pending the determination of **H.C.C.S No. 43 of 2019**

pending before this court for the rightful beneficiary/owner of the land.

2. The rightfully determined beneficiary/owner of the land shall be entitled to collect the deposited sum from court.
3. The Applicant to 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.
4. The Applicant shall proceed with construction on the acquired right of way for the **Buhimba - Kakumiro road project** on the above described land upon deposit of the compensation sums in court on account of the road project land.
5. There shall be no order for costs as the orders herein are for the benefit of all the parties.

Dated at **Masindi** this 7th day of Sept, 2021.


Byaruhanga Jesse Rugyema
JUDGE