

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISC. APPLICATION NO. 0096 OF 2020
(ARISING FROM CIVIL SUIT NO. 0034 OF 2020)

UGANDA NATIONAL ROADS AUTHORITY APPLICANT

VERSUS

1. NAKATE PHILOMERA
2. SEKITOLEKO ALLAN
3. SEKITOLEKO JOVAN
4. BALUNGI FLAVIA } RESPONDENTS

RULING

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

[1] This application has been brought by Uganda National Roads Authority (hereinafter referred to as the Applicant) against Nakate Philomera and others (hereinafter referred to as Claimants/Respondents) under *Sections 59 and 58 Civil Procedure Act* and *Order 34 rules 1 & 2 Civil Procedure Rules* seeking for the following orders;

- a. The Applicant deposits in court, Ugx 122,149,794/- being compensation sums in respect to land 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. 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 any 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 grounds in support of the application are contained in the affidavit of **Nambi Irene**, a surveyor with the Applicant which briefly is to the effect that:-

1. 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 the above described land among the properties that would be affected by the road project.
2. The **Buhimba - Kakumiro road project** affects land situate at **Kasambya Trading Centre, Kasambya Sub county, Kakumiro District** that is being claimed by all the Claimants, and the affected portion was assessed and valued for compensation at **Ugx 122,149,794/-** (One hundred and twenty two million, one hundred and forty nine thousand, seven hundred ninety four shillings only).
3. The Applicant currently holds the sum set out in (2) above but is constrained in determining who the rightful beneficiary of the same is.
4. The Applicant is at a substantial risk of losing colossal sums of tax payers' money in delay damages payable to the contractor on the above project for each day that the Applicant does not accord it site for construction, while the above dispute persist.
5. The Applicant claims no interest in the above stated compensation sum in dispute.
6. There is no collusion between the Applicant and any of the Claimants.
7. The Applicant is ready and willing to deposit the above mentioned sum in court or to dispose of the same as may be directed by court.

[3] **Nakate Philomera** (1st Claimant/Respondent) filed an affidavit in reply and opposition of the application and therein stated briefly as follows:-

1. That the Applicant is a statutory body which she sued in the head suit **(H.C.C.S No. 34 of 2020)**.
2. That the other Claimants (2nd - 4th Claimants/Respondents) are her stepsons and daughter respectively, being children of her late husband, **Sebastian Ssali Ssekitoleko**.
3. That this application filed by the Applicant and the other 3 Claimants/Respondents is *prima facie* not maintainable, either in law or on the facts of the case because, the supporting affidavit is premised on lies and or falsehoods with the intention of misleading court to escape liability and that the application is brought under the presumption that there is a pending suit by and between the Claimants, whereas not.
4. That the head suit from which this application arises was instituted by her against the Applicant for unjustifiably and illegally halting and continuing to hold onto her compensation.
5. That the Government through the Applicant acquired the land in issue after assessing its compensation value in her favour and that on 22nd January, 2019, she surrendered the relevant portion of land and ceased to own, including occupation and possessing the appropriate land that is carrying out any agricultural activities and/or economic business.
6. That factually, and in particular reference to the appropriated land, the road construction is underway.
7. That she is the sole and rightful beneficiary of the compensation sum and the 2nd - 4th Claimants have no interest, whatsoever, in her property and the benefits accruing therefrom.

8. That save for unsubstantiated claims, there is no real pending dispute between the 1st Claimant and the other 3 Claimants as alleged by the Applicant and none have been brought to her attention by either the Applicant or the 2nd - 4th Claimants.
9. That the Applicant has in the circumstances failed to prove the criteria required to **interplead** and there is therefore no basis for this court to grant this application as requested by the Applicant.
10. That the Applicant's application be dismissed with costs for lack of merit and the court orders the Applicant to promptly pay her the Ugx 122,149,794/- being the assessed, valued and approved compensation sum for part of her expropriated land at **Kasambya Trading Centre, Kasambya Sub county along Buhimba - Kakumiro road project.**

[4] The 2nd - 4th Claimants/Respondents filed their affidavit in reply stating briefly as follows:-

1. **That the contents of this instant application and accompanying submissions filed by the Applicant are fully admitted and allowed save that in the interests of justice, costs be borne by each party personally** considering the fact that all the Claimants are one and the same family are all claiming from the same estate.
2. That the 2nd - 4th Claimants/Respondents are beneficiaries to the estate of the late **Ssali Joram**, father to their late father **Ssekitoleko Ssali Sebastian** both who died intestate in 2004 and 2006 respectively.
3. That after the celebration of the last funeral rites of **Ssekitoleko Ssali Ssebastian**, his family held a family meeting wherein they agreed to allocate the deceased's properties and the 2nd, 3rd and 4th Claimants were allocated and given the suit land situate at **Kasambya village, Kasambya Sub county, Kakumiro District** as their inheritance.

Counsel legal representation and submissions:

- [5] The Applicant is represented by **Ms. Suzanne Aisia** of the **Applicant Directorate of legal services**, Kampala while the 1st Claimant/Respondent is represented by **Mr. Rwakafuzi** of **M/s Rwakafuzi & Co. Advocates**, Kampala and the 2nd - 4th Claimants/Respondents are represented by **Mr. Sam Kiwanuka** of **M/s Sam Kiwanuka & Co. Advocates**, Kampala.
- [6] The Applicant's Counsel filed written submissions for consideration whereas none of the Claimants/Respondents' Counsel filed any of their respective submissions. This ruling is therefore without any content of their input.

Consideration of the Application:

- [7] This application is brought under the provisions of *Sections 59 and 58 Civil Procedure Act* and *Order 34 rules 1, 2 & 6 Civil Procedure Rules* all providing for interpleader proceedings.

Issues for consideration:

- [8] 1. Whether this interpleader application is competent.
2. Remedies to the parties.

Issue No. 1: Whether the interpleader application is competent

- [9] *Section 59 Civil Procedure Act* provides that:

"Where two or more persons claim adversary 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 or costs and who is ready to pay or deliver it to the rightful claimant, that 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 payment or delivery shall be made, and of obtaining indemnity for himself or herself; except 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.”

[10] **Order 34 rules 1 & 2 Civil Procedure Rules** provide that:-

“Interpleader proceedings may be instituted;

a. In a case where no suit is pending by an originating summons or

b. In a case where a suit is pending, by motion of notice in that action.”

[11] In the instant case, the application has been brought by Notice of motion by virtue of the pending **H.C.C.S No. 34 of 2020** wherein the plaintiff is **Nakate Philomera** (the 1st Claimant) and Defendant is **Uganda National roads Authority (UNRA)**. The Plaintiff’s claim in the head suit, inter alia is for:

“a. A declaration that the decision to halt the payment to the Plaintiff by the Defendant of the compensation sum for her expropriated land is/was unjustifiably, illegal, null and void.

b. A declaration that the decision to continue holding onto the payment to the Plaintiff by the Defendant of the compensation sum for her expropriated land is unjustifiable, illegal and void.

c. ...

d. An order compelling and directing the Defendant to lift the decision and promptly pay the Plaintiff **Ugx 122,149,794/-** being the assessed, valued, and approved compensation sum for part of her expropriated land at **Kasambya Trading Centre, Kasambya Sub county along Buhimba - Kakumiro road project.**

[12] In her affidavit in reply, the 1st Claimant/Respondent contended that there exists no **real** dispute among Claimants filed in court from which

this application ought to have arisen. The head suit in court was instead filed by the 1st Claimant herself against the Applicant for *unjustifiably and illegally halting and continuing to hold onto her compensation*.

[13] In its Written statement of defence in the head suit on the other hand, the Applicant/Defendant contended that the **Buhimba - Kakumiro road** is one of the road projects developed by the Defendant and it assessed the property at **Kasambya Trading Centre, Kasambya Sub county** along **Buhimba - Kakumiro road** for compensation in the names of the 1st Claimant/Plaintiff at **Ugx 122,149,794/-** and it is due for payment. That however before payment was effected, the Applicant/Defendant received a complaint/counterclaim from the 2nd - 4th Claimants as alleged beneficiaries over the suit property and as a result, they are constrained to pay the compensation before the rightful beneficiary is known or determined.

[14] *Section 59 Civil Procedure Act* require an existing suit, and in this case, **H.C.C.S No. 34 of 2020** to be dealing with the same subject matter in the interpleader proceedings. In this case, I find this requirement present as in both matters, the subject matter is payment of compensation in respect of land situate at **Kasambya Trading Centre, Kasambya Sub county Kakumiro District** along the **Buhimba - Kakumiro road project**.

[15] Secondly, there must be two or more persons claiming 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. In this case, in the pending head suit, the Claimants are not claiming adversely to one another. It is only the 1st Claimant/Plaintiff who is claiming against the Applicant/Defendant. Whereas it is clear that the Applicant claims no interest in the compensation sum and the Applicant is willing to pay the compensation and or deposit it in court, or dispose it as the court may direct, the mere

claim by the Applicant that the 2nd - 4th Claimants lodged a complaint to the effect that they are also claiming to be beneficiaries to the suit property, in my view does not place this matter under the precincts of **Section 59 Civil Procedure Act**. The head suit ought to display and have the Claimants claiming adversely to one another the compensation sums so that the determination of the head suit resolves who is the rightful beneficiary of the sum entitled to collect it from court if this application is to be granted. There is therefore, in the circumstances of this case no real pending dispute among the Claimants shown by the Applicant.

[16] Thirdly, the existing pending head suit must appear not capable of determining all the rights of the parties therein. If in the present case, the head suit, **C.S No. 34 of 2020** is found capable of determining all the rights of the 1st Claimant/Plaintiff and the Applicant/Defendant, no suit of interpleader ought to be instituted. In this case, the pending suit is capable of determining all the rights of the parties therein.

[17] It is apparent in this case that the resolution of the head suit shall determine whether the 1st Claimant/Plaintiff is entitled for payment of the compensation sum amounting to **Ugx 122,149,794/-** from the Applicant/Defendant thus rendering the present interpleader application incompetent before this court. Besides, it is my view that granting this application shall have dire ramifications, an absurdity. For example, if this application is granted, and the compensation is deposited in court and the Applicant is discharged from any liability arising out and claim and or action for the compensation sums currently in its possession on account of the suit land, in the event that the 1st Claimant/Plaintiff, the sole Claimant in the head suit ends up unsuccessful in her action, it is apparent that court would end up being stranded with the deposited compensation sum and probably, more and other Claimants would appear and file one suit after the other without end pursuing the money. This in my view shall be an absurdity! The remedies the Applicant is

seeking in this application are obtainable from the head suit where it is a party and therefore it is inappropriate and incompetent before this court.

[18] In conclusion, I find this interpleader application incompetent and without merit and it is accordingly dismissed.

Remedies:

[19] It is trite law that costs follow the event and the successful party is entitled to costs unless the court or the Judge shall for good reason otherwise order; *Section 27 Civil Procedure Act*, see also **KINYERA GEORGE VS. VICTORIA SEEDS LTD H.C.C.S NO. 604 /2015** (Commercial Division).

[20] In the interpleader proceedings, the 2nd - 4th Claimants/Respondents are reflected and named as Claimants but in the head suit, which was duly served upon the Applicant/Defendant in August 2020 before the filing of the present interpleader application, the 2nd - 4th Claimants/Respondents were never named as parties. It was therefore erroneous for the Applicant to include them as Claimants/Respondents in this application which arises out of the head suit in which they were not parties. The 2nd - 4th Claimants nevertheless contend that each party should bear his or her costs. It is only the 1st Claimant who contends that she deserves costs of this application. She filed the head suit that would resolve and determine the Applicant and her rights under the suit. The Applicant nevertheless opted to file the present application seeking a remedy that was already available upon determination of the head suit. In my view, in the circumstances of this case it is just that the Applicant be condemned to costs in favour of the 1st Claimant/Plaintiff.


[21] In the premises, the Applicant shall not be discharged from liability arising out of any claim and or action for the compensation sums currently in its possession until the determination of the head suit.

[22] The assessment and award of shs. 122,149,794/- as compensation sum for land situate at **Kasambya Trading Centre, Kasambya Sub county in Kakumiro District** acquired for purposes of construction of **Buhimba - Kakumiro road project** is not under any contestation by the Claimants. It is also apparent that the occupation, utilization and commencement of the construction works on the suit land has never been objected to as the 1st Claimant/Respondent wholly surrendered it for the project, it therefore follows that the Applicant ought to be allowed/permitted to proceed with the construction of the **Buhimba - Kakumiro road project** on the acquired right of way.

[23] In brief, this court therefore orders as follows:-

1. The interpleader application is dismissed with costs to the 1st Claimant/Respondent.
2. The Applicant shall not be discharged from any liability arising out any claim and or action for compensation sums currently in its possession until determination and disposal of H.C.C.S No. 34/2020.
3. The Applicant is allowed to proceed with construction on the acquired right of way for the **Buhimba - Kakumiro road project** on the suit land situate at Kasambya Trading Centre, Kasambya Sub county, Kakumiro District by the Claimants.

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


Byaruhanga Jesse Ruggyema
JUDGE

7/9/21
- Lydia Katamuni - for applicant
- Kadibank Leonard for the
- 1st resp
- The rest of the 2nd all parties