

- c) The destruction of the plaintiffs' crops without payment of prompt, fair and adequate compensation amounted to a violation of their right to livelihood and life.
- d) The plaintiffs are entitled to a fair, timely and adequate compensation for their respective tracts of land that were entered into and their crops that were destroyed.
- e) Interest on compensation at commercial rate from the date of violations complained against until payment in full.
- f) General damages, exemplary/punitive damages and aggravated/compensatory damages and interest thereon from the date of judgment till payment in full.
- g) Costs of the suit.

[3] In its Written Statement of Defence (WSD), the defendant denied the plaintiffs' allegations and opined that it shall raise a point of law that the suit is improperly before court and the dispute should have been referred to the Chief Government valuer for determination under **Section 139 (2) of the Petroleum (Exploration, Development and Production) Act, No.3 of 2013** ("The Upstream Petroleum Act")

Counsel Legal representation

[4] The plaintiffs were represented by **Counsel Keishaari of Frank Tumusiime & Co Advocates, Kampala** while the defendant was represented by **Counsel Walter Bakirana of ABMAK Associates, Kampala.**

Preliminary objection

[5] At the commencement of the hearing of this suit, Counsel for the defendant, as intimated in the WSD, raised a preliminary objection that this court does not have jurisdiction to entertain the suit which

relates to a claim of compensation of crops damaged during the course of conducting petroleum activities on the plaintiff's land.

Submissions of Counsel Bakirana

- [6] The plaintiffs are 105 individuals who claim for compensation for damages to crops during the process of the defendant conducting petroleum activities on the plaintiffs' land. The defendant's averment is that the claims of this nature are supposed to be determined by the Chief Government Valuer in accordance with **Section 139 of the Petroleum (Exploration, Development and Production) Act, 2013**. That **Section 139** is to the effect that where crops are damaged during the course of the licensee petroleum activities, the land owner is to demand for compensation of the damage and under **Section 139 (2)**, the High court does not have jurisdiction where the other statute or even the constitution has made a reserve to other administrative agencies. That in this case, the jurisdiction is a reserve of the Chief Government Valuer. He cited the authorities of **Guangzhou Dongsong Energy Co. Ltd Vs Ms Fang Min. H.C.M.A No.500/2016 (Commercial Division)** and **Nile Fos Minerals Ltd Vs A.G & 2 ORS H.C.M.A No. 361/2013 (Civil Division)** in support of his point of objection.
- [7] Counsel argued that though **Article 139 of the Constitution** clothes the High court with unlimited original jurisdiction an all matters, the provision is subject to other provisions of the Constitution. That **Article 244 of the Constitution** has provided for regulation of the mineral sector and in its wisdom, Parliament passed various laws to regulate the petroleum sector and one of the laws is the **Petroleum (Exploration, Development and Production) Act No.3 of 2013**. That there under, **Section 139** granted the jurisdiction in such complaints

to the Chief Government valuer. That therefore to bring this suit directly to High Court would be to defeat the intention of the legislature and in fact, the intention of the framers of the constitution as regards **Articles 139 and 244**. That in this case therefore, **Article 139** should be read with **Article 244 of the Constitution** that provides for parliament to legislate laws regulating the exploitation of minerals.

- [8] Counsel concluded that in the premises, permitting the High Court jurisdiction to handle matters under **Section 139 (1) of the Petroleum (Exploration, Development and Production) Act** would be to defeat the effect and the purpose of the legislature in enacting **Section 139 (2) of the Act** which is couched in mandatory terms that such claims can only be first heard by the Chief Government valuer. That in this case, the Chief Government has never been given an opportunity to hear the dispute of the parties.

Submissions in reply by counsel Keishaari

- [9] Counsel submitted that as per the defendant's pleadings, it is the Chief Government Valuer who certified the amount to be paid to the plaintiffs and that they were not satisfied and for that reason, they came to court. It was his view therefore, the plaintiffs cannot go back to the same person who has certified the amount to be paid to them.
- [10] Secondly, that this matter is about enforcement of human rights; basically the right to life, right to protection from deprivation of property and right to livelihood. That it is therefore really untenable for one to state that the Chief Government Valuer is a competent body to deal with issues involving enforcement of human rights.

- [11] Thirdly, that the High Court has unlimited original jurisdiction and if it is to be taken away or limited, it must be by operation of the law. That there is no provision in the Constitution whatsoever, that provides that the High Court is not vested with the original jurisdiction to handle matters arising from petroleum related activities. He distinguished the present case from the **URA VS RABBO ENTERPRISES (U) LTD & ANOR, S.C.C.A No. 12/14** that was provided by counsel for the defendant, because in that case, **Article 152(3) of the Constitution** provides that parliament shall make laws to establish Tax Tribunals for the purposes of settling tax disputes and the Chief Government Valuer in this case, is not a body established for purposes of handling disputes arising from petroleum activities. That therefore **Section 139 of the Petroleum (Exploration and Production) Act** does not take away original jurisdiction of the High court or alter the effect of **Article 139 of the Constitution**. Counsel relied on the case of **Former employees of G4S Security Services (U) ltd Vs G4S Security Services ltd S.C.C.A No.18/2010**.
- [12] Counsel concluded that the Chief Government valuer in this case is not an impartial body to handle this matter and secondly, he has not been vested with the jurisdiction to handle matters involving enforcement of fundamental human rights.
- [13] In rejoinder, counsel for the plaintiffs responded that this matter is a disguised human rights matter because the plaintiffs' claims of violation of their rights, property and livelihood arose when the defendant sought to carry out the surveys on their land.

Determination

[14] It is a trite principle of law that the jurisdiction of a court must be found in statute. **Article 139 of the Constitution** provides for the jurisdiction of the High Court thus;

“(1)The High court shall subject to the provisions of this constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this constitution or other law.”

[15] On the other hand, **Article 244 of the Constitution** provides thus;
“Article 244 Minerals

(1) Subject to clause (2) of this Article, parliament shall make laws regulating;

(a) the exploitation of minerals

(b) ...

(c) the conditions for payment of indemnities arising out of exploitation of minerals, and

(d) the conditions regarding restoration of derelict lands.

(2) Minerals and mineral ores shall be exploited taking into account the interests of individual land owners, local governments and the Government.”

[16] Pursuant to the above constitutional provision, Parliament enacted the Petroleum (Exploration, Development and Production) Act 2013. **Section 139 of the Act** provides as follows;

“139. Compensation for disturbance of rights

(1) A licensee shall, on demand being made by a land owner, pay the land owner fair and reasonable compensation for any disturbance of his or her rights for any damage done to the surface of the land due to petroleum activities, and shall, at the

demand of the owner of any crops, trees, buildings or houses damaged during the course of the activities, pay compensation for the damage;”

(2) “Where the licensee fails to pay compensation under this section or if the land owner of any land is dissatisfied with any compensation offered, the dispute shall be determined by the Chief Government Valuer.”

[17] In my view, the above provisions, in no way did Parliament intend to oust or limit the jurisdiction of the High court conferred by **Article 139 of the Constitution. Section 139 (2) of the Petroleum (exploration, development and production) Act** merely provides for a remedy of a land owner who is dissatisfied with any compensation offered by the licensee to seek redress from the Chief Government Valuer, a specialized agency or body in the determination and assessment of valuations of properties and not that the provision bars the land owner from seeking any legal remedy from any ordinary civil court of law in the country. I am amplified in this position by the observation of Prof. Dr. Lilian Tibatemwa-Ekirikubinza in **URA VS RABBO ENTERPRISES (U) LTD & ANOR (Supra) at p.20** while commenting on the case of **KAYONDO VS THE CO-OP BANK (U) LTD S.C.C.A NO. 109/1992** that in that case, the Appellant, a former employee of the Respondent Bank had sued the bank in the High court for terminating his contract of service. The Respondent bank was at the same time registered under the **Co-op. societies Act No. 30/1970. Section 73 of the Act** was to the effect that any dispute arising between the society (in this case bank) and any of its officers shall be referred to the Registrar of the society for decision.

[18] One of the issues for determination was whether **Section 73 of the Co-op Societies Act** ousted the unlimited jurisdiction of the High court. The trial judge held that the use of the word “shall” in the section clearly unequivocally ousted the jurisdiction of the High court in such disputes. The court of Appeal on the other hand overturned the trial judge’s decision. It found **Section 73** did not oust the jurisdiction of the High court in disputes between co-operative societies and their officers. That under the constitution and the Judicature Act, the High court had unlimited original jurisdiction and that for a statute to oust the jurisdiction of the High court, it must say so expressly.

[19] The honourable Justices of the Supreme court observed that in the above **Kayondo case**, the jurisdiction of the Registrar to handle disputes was derived solely from the statute in the co-operative societies Act and not premised anywhere in the constitution and therefore could not oust the jurisdiction of the High court.

[20] In the instant case, the plaintiffs premised their case on the violations that arose from or during the petroleum related activities. As per **paragraph 10 of the WSD**, a part of them is aggrieved by the destruction of their crops as a result of oil and gas operations and are not accounted for under the Chief Government Valuer approved valuation report. Indeed, the listed families in **paragraph 5 of the plaint** complain that their crops were destroyed but they were not compensated for the loss. They justifiably felt that the Chief Government Valuer cannot be impartial in the determination of their dispute and opted to file the present suit. I find that **Section 139 (2) of the Petroleum (exploration, development and production) Act** does not oust the jurisdiction of the High court in disputes between land owners and the licensee, in this case the defendant. Under

Article 139 of the Constitution and Section 14 of the Judicature Act, the High court has unlimited original jurisdiction to entertain this suit which relates to claim for compensation for crops damaged in the process of conducting petroleum activities on the plaintiffs' lands. **Section 139 (2) of the Petroleum (exploration, development and production) Act** does not in any way oust the jurisdiction of the High court. As a result, this court cannot shut its doors from the plaintiffs seeking legal redress for their grievances against the defendant.

[21] In the premises, I overrule the preliminary objection. The suit is to proceed and be heard on its merits.

Dated at Masindi this 21st day of December, 2021.

Byaruhanga Jesse Rugyema

JUDGE