

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASAKA  
CIVIL SUIT NO. 71 OF 2016

BABIRYE SARAH ..... PLAINTIFF

VERSUS

1. UGANDA NATIONAL ROADS AUTHORITY
2. M/S CONSULTING SURVEYORS & PLANNERS ..... DEFENDANTS

*Before; Hon. Justice Victoria Nakintu Nkwanga Katamba*

**JUDGMENT**

The Plaintiff Babirye Sarah brought this suit against the Defendants jointly and severally for the return of a Certificate of Title for land comprised in Buddu Block 185 Plot 315 (the suit land) at Lukaya Town Council, Kalungu District, general damages and costs of the suit.

The Plaintiff's claim is that she is the registered proprietor for the suit land and during the construction of the Kamengo-Lukaya Masaka Highway, the 1<sup>st</sup> Defendant used a portion of the suit land and requested the Plaintiff to hand over the certificate of title to the land for purposes of valuation. The certificate of title was received on the 25/11/2013 and has not been returned to date despite the Plaintiff's demands for the same.

In its Written Statement of Defense, the 1<sup>st</sup> Defendant denied the Plaintiff's claim and averred that the 2<sup>nd</sup> Defendant was contracted to identify and assess property that was likely to be affected by the construction. The 2<sup>nd</sup> Defendant collected certificates of title including the Plaintiff's title for subdivision and registration in the 1<sup>st</sup> Defendant's name. The registration process has been delayed due the new land administration and management system and the 1<sup>st</sup> Defendant is not liable for any loss suffered by the Plaintiff.

When the matter proceeded for hearing on the 1<sup>st</sup> day of July, 2020, counsel for the Plaintiff informed court that the Plaintiff's certificate of title had been returned and the only issue to determine related to damages. On the 9<sup>th</sup> day of September, 2020, parties informed court

that they reached a settlement and court gave an adjournment for production of a settlement to be endorsed by court. The settlement was never produced and the Plaintiff gave her evidence on damages.

The Plaintiff stated that her certificate of title was taken on 25<sup>th</sup> November, 2013 and returned on the 26<sup>th</sup> November, 2019 after the institution of this suit. She was deprived from using her title as security to borrow money and she could not transfer her land to her children. She was also unable to sell part of the land and upon receipt of the title, she was finally able to obtain a loan and pay her medical treatment costs. The Plaintiff prayed for compensation from the 1<sup>st</sup> Defendant for the time she was deprived of her title and prayed for damages of Ugx. 30,000,000/= for the loss and inconvenience suffered.

In cross examination, she stated that she was compensated for the land that was acquired by the 1<sup>st</sup> Defendant but the compensation did not include disturbance allowance. The Parties had agreed to a settlement of Ugx. 5,000,000/= but the 1<sup>st</sup> Defendant never showed and she accepted the 5,000,000/= because she is sick and did not want to waste court's time.

### **Determination of the suit;**

The only issue for determination relates to damages. In assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered and a plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he or she would have been if she or he had not suffered the wrong. (*See Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305, Charles Acire Vs Myaana Engola, HCCS 143/1993, Kibimba Rice Ltd Vs Umar Salim, SCCA 17/1992 and Hardley Vs Baxendale (1894) 9 Exch 341*)

The purpose of general damages is to make good of the inconvenience or loss suffered by the Plaintiff due to the actions of the Defendant. In the instant case, the 1<sup>st</sup> Defendant held onto the Plaintiff's certificate of title for a period of six years. The Plaintiff wrote letters to

the 1<sup>st</sup> Defendant to retrieve her title which course of action should have solved this entire case had the 1<sup>st</sup> Defendant returned the certificate of title.

The certificate of title was obtained for lawful purpose, however, the Plaintiff had a right to receive the title once the purpose for which it was taken was completed.

Furthermore, in its Written Statement of Defence, the 1<sup>st</sup> Defendant denied the claim yet the certificate of title was in its possession. The 1<sup>st</sup> Defendant instead of acknowledging its mistake, and saving this court time, chose to drag on a case that was filed in 2016 and in addition, attempted to settle the case with the Plaintiff and frustrated the settlement process on several occasions.

The actions of the 1<sup>st</sup> Defendant therefore not only deprived the Plaintiff her rights to the use of her property/certificate of title but also caused loss onto her for prosecuting this suit over a matter that did not need to be brought to court in the first place.

The Plaintiff stated that she was inconvenienced from dealing in her land, using her land as security and transferring the land to her children. The Plaintiff adduced evidence that she was able to obtain a loan upon receipt of her certificate of title.

I therefore find that the Plaintiff was indeed inconvenienced by the wrongful actions of the 1<sup>st</sup> Defendant and will therefore award general damages of Ugx. 20,000,000/=

Judgment is hereby entered for the Plaintiff and the Plaintiff is awarded costs of the suit.

I so order.

Dated at Masaka this 17th day of January, 2022

Signed;



**Victoria Nakintu Nkwanga Katamba**

**Judge**