THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO. 20 OF 2010

LEYA KACHAYO BYARUFU :: PLAINTIFF

VERSUS

1. ATTORNEY GENERAL
2. UGANDA LAND COMMISSION::DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

[1] The Plaintiff sued the Defendants jointly and severally for recovery of compensation for her land and developments thereon comprised in **LRV 1131 Folio 9 at Kiryandongo District known as Ranch No. 36 Bunyoro Ranching Scheme measuring 1564.5 hectares (six square miles)** which was acquired by the Government during the Ranch Restructuring exercise.

Background:

[2] In the 1960s and 1970s, Government created and sponsored ranches (Ranching Schemes). These were Ankole, Kabula, Mawogola, Singo, Buruli and Bunyoro Ranching Schemes. These Ranches were allocated to Ranchers by government and the Plaintiff was one of them.

[3] The Plaintiff was the owner and registered proprietor of **Ranch No.36** Masindi comprised in LRV 1131 Folio 9 at Kiryandongo measuring 1564.5 hectares (six square miles).

[4] During the turmoil days of the 1980s in the country, Ranches deserted the Ranches and eventually squatters invaded and occupied them. When normality returned, there was conflict between the Ranchers and squatters. For purposes of harmonizing the squatters with the Ranchers, who had returned to reoccupy their Ranches, the Government of Uganda instituted a commission of inquiry into the Ranching Schemes which later came out with a recommendation that the Ranches be restructured by subdividing them into two portions; **"A"** for the Ranchers and **"B"** for the squatters.

[5] During the Restructuring exercise of the Ranches which took place in the 1990s, the Plaintiff's **Ranch 36, Kiryandongo** was one of those affected. It was restructured into **Ranch No.36A** measuring approximately **259 hectares** (LRV 3131 Folio 14) for the Rancher/Plaintiff and **Ranch No. 36B** measuring approximately **1305.5 hectares** for the squatters.

[6] According to the defendant, in conformity with the then laid out procedure, the plaintiff signed the **Surrender lease document** (Deed), handed over the original certificate of title (LRV 1131 Folio 9) for the completion of the subdivision and titling of the portion she retained.

[7] It is the Plaintiff's case that during her absence when she was jail, the land officials from Masindi District Local Government, led by the District Land Officer, a one **Mugoya James** came unto her Ranch, found there her manager who in her absence was instructed to surrender the land title to them. That the manager was informed that the Uganda Land Commission had decided to take away part of the Ranch measuring five square miles leaving the Plaintiff with one square mile. The Plaintiff's manager handed over the land title to the District Land Officer who was leading the team. Lands officials informed the Manager that Government would compensate the Plaintiff as soon as possible.

[8] The Plaintiff denied ever endorsing the Surrender lease deed surrendering a portion of land/Ranch to Government for the benefit of the squatters. She contends that her land was compulsorily acquired by Government but to date no compensation has been made. By this suit, the Plaintiff therefore seeks recovery of compensation for her land compulsorily acquired by the Defendants and/or Government.

[9] The Defendants denied the Plaintiff's claim and prayed for dismissal of the suit. It is the defendants' case that the Plaintiff having surrendered a portion of the suit land for the benefit of the squatters, she was not entitled to any compensation from the Government.

Legal representation

[10] The Plaintiff was represented by learned Counsel **Mr. Kasangaki Simon of M/s Kasangaki and Co. Advocates** while learned Counsel **Mr. Wanyama Kodoli, Senior Principal State Attorney** of the **Attorney General Chambers** represented the Defendants. Both counsel filed their written submissions as permitted and directed by this court. I have taken due consideration of the parties' submissions.

Issues for determination

[11] In their scheduling conferencing memorandum, both parties proposed the following issues for the determination of this suit, I do properly frame them as follows;

1. Whether the Plaintiff has a cause of action against the defendants.
2. What remedies are available to the parties.

Burden of proof:

[12] According to **Section 103 of the Evidence Act Cap 6,** the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. It is trite law that the standard of proof in civil cases is on a balance of probabilities and the burden lies on the Plaintiff to prove his or her case on the balance of probabilities; **NSUBUGA VS. KAVUMA [1978] HCB 307.** It therefore follows that in this case, the Plaintiff has the burden to prove her allegations.

Preliminary Objections

[13] When the matter came up for hearing on 29.11.2021 the defense counsel **Mr. Wanyama Kodoli** raised two points of law:

i. The plaint does not disclose a cause of action and
ii. Limitation; that the suit is time barred.

Court reserved the decision on the objections for the final judgment which I now proceed to address.

i)Whether the plaint disclosed a cause of action

[14] The determination of this objection require the consideration of the plaint and annextures thereon. As per her amended plaint, the Plaintiff pleaded that she is the registered proprietor of her land comprised in **Ranch 36 Kiryandongo, Masindi measuring 6 square miles** with a lease of 49 years granted by the ULC in 1981. Then, that the land officials led by the District land officer a one **Mugoya,** took away 5 square miles of the Ranch in favour of Government for resettling refugees with a promise that Government would compensate her for the deprived land. To date no compensation has been paid.

[15] This objection by counsel for the defendants was based on the following; that the plaint filed on 14.5.2013 does not disclose a cause of action against the Defendants in paragraphs 4 (b) and (c) of Plaint. Counsel relied on the case of **Auto Garage versus Motokov (No 3) (1971) EA 514 at 519** Spry VP of the East African Court of Appeal which summarized the essential ingredients which should be present for a plaint to disclose a cause of action. These are that the plaintiff enjoyed a right; that the right has been violated and thirdly that the defendant is liable. It was contended for the Defendants that a plaint which discloses no cause of action should be rejected as per **Order 7 rule 11 of the Civil Procedure Rules SI 71-1.** Secondly, it was also correctly pointed out to court that the question whether a plaint discloses a cause of action is determined upon perusal of the plaint alone and any attachments to it and on the assumption that the averments in the plaint are true, See **Attorney General versus Oluoch (1972) EA 392**. Thirdly, all necessary facts to establish the cause of action have to be alleged in the plaint for it to disclose a cause or causes of action, See **Sullivan versus Mohammed Osman [1959] EA 239**.

[16] Learned counsel for the Defendants buttressed his submission further that **Order 7 rule 11 (a) of the Civil Procedure Rules SI 71-1** has been applied in **Cottar v Attorney General for Kenya 193 A.C at page 18** where it was said by **Sir Joseph Sheridan CJ** as he then was

"What is important in considering whether the cause of action is revealed by the pleadings is the question to what right has been violated. In addition of course the plaintiff must appear as a person aggrieved by the violation of his right and the defendant as a person who is liable, then in my opinion a cause of action has been disclosed and any omission or defect may be put right by amendment. If on the other hand any of those essentials is missing no cause of action has been shown and no amendment is permissible."

[17] Counsel for the Plaintiff on the other hand contended that a careful study and scrutiny of the plaint and the evidence on record reveals that the Plaint sufficiently discloses a cause of action. The cause of action is for recovery of compensation for her land measuring 5 square miles comprised in **Ranch 36 Bunyoro Ranching Scheme** which was compulsorily acquired by Government in the Ranch Restructuring exercise carried out in Uganda, damages and costs.

[18] Upon perusal of the submissions by counsel, I find that in accordance with the authority of **Auto Garage Vs Motokov (supra),** the Plaintiff in her pleadings disclosed her right to property in the suit land and that she was deprived of the suit property during the Government Ranch Restructuring exercise thus violation of her right to property and holds the defendants liable. As to whether the defendants in this case would be liable for the conduct and actions of the District Land Officer named as **Mugoya** is a matter of evidence that would be determined by the merits of the suit. In the premises, I find that the plaint disclosed a cause of action and therefore this preliminary objection stand dismissed.

ii) Limitation; Whether the suit is time barred

[19] The Defendants contended that this suit was filed on **28.7.2010** after cancellation of the Plaintiff's name from the certificate of title (Annexture marked "A" to the Plaint). Counsel for the Defendants argued that the date of the new certificate of title for 1 square mile is 10.7.2003, although the date of Plaintiff's cancellation from the certificate of title was unknown. That the deed of surrender was entered on 20/4/2001 and therefore, Learned Counsel invited court to find that the suit was time barred under

section 187 of the Registration of Titles Act and no limitation exemption was pleaded contrary to **Order 7 rule 6 of the Civil Procedure Rules SI 71-** Counsel relied on the authorities of **URA V Uganda Consolidated Properties Ltd CACA No 31 of 2000** for the holding that limitation is a matter of law and court has no jurisdiction to extend the time stipulated by an act of Parliament, **Edward Byaruhanga Katumba v Kiwalabye Musoke CACA No 2 of 1993** for the holding that court is barred from granting any relief to the Plaintiff where the suit is time barred and **Madhivani Group V Simbwa, SCCA No 615 of 2012** for the holding that a defendant should not be allowed to benefit where the suit is time barred.

[20] Counsel for the Plaintiff did not agree that the plaintiff suit is time barred. He inter alia, contended for the Plaintiff that the Defendants' admission of liability reflected in **P.Exh. 3** of the Plaintiff's exhibits cures any issues of limitation raised by the Defendants.

[21] This is a case for recovery of compensation of the Plaintiff's land and developments thereon that arose out of the Government's acquisition of the land during the Ranch Restructuring exercise. The restructuring exercise was a process that entailed identification of the Ranch in question, acquisition of the Ranch or portion of the Ranch, valuation of the acquired Ranch or portion of the Ranch and the processing of compensation for the affected Rancher. In this case, this process is reflected in the Surrender lease deed and surrender of title by the Ranchers that would commence the acquisition of the land, and then the filling of the **"Verification of Ranchers eligible for compensation for lost facilities"** form **(D.Exh.2)** pending assessment or valuation of the lost Ranch and payment of the compensation.

[22] According to **Section 187 of the RTA,** no action for recovery of damages sustained through deprivations of land, shall lie against Government unless the action is commenced within 6 years from the date of deprivation. In my view, in this case of the Ranch restructuring exercise, time would not start running from when the Plaintiff's certificate of title was cancelled but it would run from when the defendants failed and or refused to compensate her upon her filling the "verification form" when her property has been duly assessed and valued. In this case, the valuation of the plaintiff's

property took place in 2017 **(P.Exh.3)** albeit by an order of court. The Permanent Secretary Ministry of Lands, Housing and Urban Development verified and adopted the Government Chief Valuer's Report, and what remained was payment of the compensation to the Plaintiff. I therefore agree with the submission of counsel for the Plaintiff that the Chief Government Valuer valuing the suit property and the eventual verification and adoption of the Chief Government Valuer's valuation Report amounted to acceptance of liability of the Plaintiff's claim for compensation and therefore the issue does not fall under **Section 187 RTA**.

[23] In the premises, on the basis of the above, the plaintiff's claim is not time barred and therefore this preliminary objection also fails.

Merits of the suit

Issue No.1: Whether the plaintiff has a cause of action against the defendants.

[24] In this case, the Plaintiff pleaded and/or led evidence which was not disputed that she was the registered proprietor of land described as **Ranch No. 36 Bunyoro Ranching Scheme** which was restructured by the Ranches Restructuring Board under the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) without the Plaintiff's consent and/or compensation. Her certificate of title was subdivided by Government (or 2nd Defendant) curving off 5 square miles leaving her with only 1 square mile. Government settled on her land squatters and/or refugees thereby dispossessing her of her land. It was her case that the conduct of the Defendants amounted to compulsory acquisition of her land before paying her due compensation, See **Dr. Acaitum Omanikor Isiagi v Techwaa Children & Family Project & 2 others HCCS No. 12 of 2009 (Masindi)** for a similar finding.

[25] **Winfred Nandubwa** (DW1) and **Tonny Kato Magembe** (DW2) in their evidence admitted the Plaintiff's contention that she was the owner of ranch No. 36 Bunyoro Ranching Scheme measuring 6 square miles which was restructured, upon which she lost 5 square miles.

[26] This court takes judicial notice of the fact that this was an exercise that was carried out by the Government of the republic of Uganda implemented by Government officials particularly the officials of the Defendants. This is so because though the team that went to the Plaintiff's land was led by the District Land Officer **Mr. Mugoya,** it is clear that the district land officer was not participating in this exercise as an agent of the District Local Government but was doing so as an agent of the defendants as it was later disclosed by the letter off the Permanent Secretary Ministry of Lands, Housing and Urban Development dated 6th/09/2019 **(P.Exh.3)** which in brief, owned the conduct and the actions of the said **Mugoya** and his team. The District Land Officials appear apparently to had been acting on the instructions of the 2nd Defendant (ULC).

[27] Clearly, the admission by **DW1** and **DW2** of the Plaintiff's claim which was further augmented in **P.Exh.3** proves to the required standard that the Plaintiff was a Rancher whose land was acquired by Government without prior compensation.

Compulsory Acquisition of the Plaintiff's land

[28] It is trite law that compulsory acquisition of land is a prerogative of the state. **Elements of Land Law by Gray and Gray 5th Edition** puts this beyond doubt at page 1387:

".... deeply embedded in the phenomenology of property is the idea that proprietary rights cannot be removed except "for cause". The essence of "property" involves some kind of claim that a valued asset is "proper" to one; and the "propertiness" of property depends, at least in part, on a legally protected immunity from summary cancellation or involuntary removal of the rights concerned. Yet it is also quite clear that the modern state reserves the power, in the name of all citizens, to call on the individual, in extreme circumstances and in return for just compensation, to yield up some private good for the greater good of the whole community. .... The exercise of powers of compulsory purchase for supervening community purposes constitutes, without doubt, the most far reaching form of social intervention in the property relations of individual citizens. The public power to requisition land

– or the power of "eminent domain" as it is sometimes known, has been aptly described as "the proprietary aspect of sovereignty"

[29] The above principles are enshrined in the Constitution of Uganda and the Land Act. **Article 26(2) of the Constitution of the Republic of Uganda** states:

"No person shall be compulsorily deprived of property except where the following conditions are satisfied:

Where the taking of possession or acquisition is necessary for

i. *public interest*
ii. *in the interest of the defence*
iii. *public safety*
iv. *public health*
v. *Where the compulsory taking of possession or acquisition of property is made under a law which makes provision for*

- *Prompt payment of fair and adequate compensation prior to the taking of possession.*

- *A right of access to a Court of law by any person who has an interest or right over the property."*

[30] Under **Article 237 of the Constitution of the republic of Uganda 1995 as amended,** Government can only take over someone's land if it is in the interest of the public. In **Bhatt & Another v Habib Rajani [1958] E.A 536** public interest was defined to mean the same purpose or objective in which the general interest of the community as opposed to the popular interest of individuals is directly and virtually concerned.

[31] Thus **Article 26 and 273 of the Constitution (supra)** only allows Government to use its coercive power to force a transfer in public interest and upon fair, prompt and adequate compensation. Thus in **UEB v Launde Stephen Sanya, CACA No.1 of 2000,** UEB which was a Government Corporation entered on land, destroyed trees, crops and building materials and placed thereon survey marks and high voltage power lines without the consent of the land owners. **Twinomujuni JA** held the UEB could not just

enter on anybody's land without first acquiring it and paying compensation thereby contravening **Article 26(1) (2)** and **Article 237 of the Constitution.** The Court further held that UEB should have first notified the persons affected before taking over the land which they did not do.

[32] In the instant case, the evidence on record and as held in the case of **Dr. Acaitum Omanikor Isiagi v Techwaa Children & Family Project & 2 others HCCS No. 12 of 2009 (Masindi)** the Plaintiff's Ranch was compulsorily acquired following a Government policy to restructure Ranches in the Government sponsored Ranching Schemes in Ankole, Masaka, Singo, Buruli and Masindi for the purpose of resettling the landless people, See **General Notice** contained in the **Uganda Gazette of 12th October, 1990.**

[33] On the face of the Ranch restructuring exercise, it would be correct to say that the policy of the Government was lawful because it was an issue of public interest. The Ranch Restructuring Board was implementing a Public policy Resolution of the National Resistance Council in relation to Government allocation of Ranches.

[34] It is the defendants' case however that the Plaintiff surrendered her land for free by executing a Deed of Surrender **(D.Exh.1)** which was registered on the title, that she is therefore not entitled to any compensation. On the other hand, the Plaintiff denied execution of such Surrender Deed and her denial is supported by the evidence of the handwriting expert **Ms. Chelengati Sylvia** (PW3) who examined the impugned Surrender Deed and found that it was never endorsed by the Plaintiff. The report is **P.Exh.4.** In brief, it is suspect document of Surrender of the lease. The claim by the defendants therefore that the Plaintiff signed a surrender deed handing over her land for free is untenable, violates her right to property and is not supported by the law.

[35] Counsel for the Plaintiff while relying on the authorities of **John Katarikawe v. Katwiremu & another [1977] HCB 187** and **James Charles Rwanyarare v AG & 22 others HCSS No 95 of 2001** also invited this court to find that the subdivision of the Plaintiff's land without prior and due compensation were acts of fraud that would render the subdivision null and void. I find the argument may be novel but the fact that fraud was never

pleaded and therefore never canvassed at trial, it cannot be raised at this stage; **Okello Vs UNEB, SCCA No.12 of 1982.**

[36] In conclusion I find that the **P.Exh.3** which is a letter authored by the Permanent Secretary Ministry of Lands, Housing and Urban Development owned the actions of the District Land Officials who commenced the Ranch Restructuring exercise that affected the plaintiff, the letter admits that the Plaintiffs Ranch was compulsorily acquired and she has never been compensated in the sum of UGX **UGX 6,883,905,750/=** the Chief Government valuer put her land & property thereon. **The letter and Valuation Report on record (P.Exh.3)** amount to an acknowledgement of the Defendants' legal obligation to compensate the Plaintiff for her land lost to government, See **Madhvani International SA Vs A.G CACA No.48 of 2004.**

[37] In the premises, this court finds that the Plaintiff has a cause of action against the defendants for recovery of compensation of the suit land and the developments thereon which was acquired by the Government for the resettlement of the squatters.

Issue No. 2: What remedies are available to the parties

Judgment on admission.

[38] The procedure of entering judgment on admission is governed by ***Order 13 r.6*** of the ***Civil Procedure Rules (supra)*** which provides as follows;

"*Any party may at any stage of a suit, where an admission of facts has been made, either on the* ***pleadings or otherwise,*** *apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of the other questions between the parties; and the court may upon application make such order, or give such judgment, as the court may think just."* (emphasis)

[39] These provisions have been amply expounded upon in various authoritative cases; See: **Agricultural Finance Corporation vs. Kenya National Insurance Corporation,** and **Civil Appeal No. 271 of 1996, C.A**

(K); Pan African Insurance Co vs. Uganda Airlines [1985] HCB 53. In particular, the Court of Appeal of Uganda in the case of **Kibalama vs. Alfasan Belgie [2004] EA 146, C.A (U)** held that;

"Under Order 11 r.6 (now O.13 r.6) judgment can be entered at any stage of the suit where an admission of facts has been made. Such an admission, however, must be unequivocal in order to entitle the party to judgment of any other questions between the parties."

[40] It is trite law that admission may be express or may arise by implication from non-traverse of a material fact in the statement of claim. The admission has to be clear and unambiguous and must state precisely what is being admitted. It was also held in **John Peter Nazareth v. Barclays Bank International Ltd., E.A.C.A. 39 of 1976 (UR)** that for judgment to be entered on admission, such an admission must be explicit and not open to doubt. Apart from the foregoing, once an admission of facts is made, court may upon application make such order or file such judgment, See: **African Insurance Co. v. Uganda Airlines [1985] HCB 53; Mohamed B.M. Dhanji v. Lulu & Co. [1960] E.A. 541.**

[41] Case authorities are to the effect that where the admission of facts is clear and unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so, See **KAMPALA (LAND DIVISION) H.C CIVIL SUIT NO. 180 OF 2012 & MWEBEIHA AMATOS V AG, HCMA NO.022 OF 2015.**

[42] Under ***Order 8 r.6 CPR,*** it is provided that a defendant ought to properly admit material facts as to which there is really no controversy and also not to deny plain and acknowledged facts which it is neither in his interest nor his power to disprove, See***:*** **Multi Holdings v. Uganda Commercial Bank [1972] HCB 234.** JUSTICE SSEKAANA MUSA in the case of **CONNIE KEKIYONZA WATUWA, JAMES KHAUKA AND PAMELA NAMAKANDA** (Suing as administrators of the estate of the Late David Watuwa) **VERSUS ATTORNEY GENERAL HCMA No.544/2020 [CIVIL DIVISION]** had this to say;

'It is then my understanding that the correspondences of the Defendants officials are not in dispute and respondent has not deposed to show anything to the contrary. Likewise, the Written Statement Defence does not set out a clear defence on what the Plaintiff alleges in the plaint. This court is satisfied with the evidence on record and circumstances surrounding the whole case that this is a proper case to exercise its discretion to enter judgment on admission'.

[43] In the instant suit, the Plaintiff contended that the Defendants admit her claim for compensation but have failed to make good on the payment for her land, which the Defendants' agents occupied and continue to occupy thus denying her use thereof. The Plaintiff cites various correspondences by the Defendants officers/ agencies in their official capacity concerning the subject matter of compensation (see **P.Exh. 3),** which the Plaintiff claims are proof that the Defendants unequivocally admit her claim.

[44] Indeed this court finds that by exhibit **P.Exh. 3,** the Defendants admitted in a letter authored by the Permanent Secretary Ministry of Lands, Housing and Urban Development that **Ranch 36 in Bunyoro Ranching** was owned by the Plaintiff, the same was restructured and she has never been paid. In the valuation report by the Office of the Chief Government Valuer it is admitted that the Plaintiff is owned **UGX 6,883,905,750/=** which is reflected in exhibit **P.Exh. 3.**

[45] A careful reading of the contents of **P.Exh.3** easily reveals that the Defendants in fact admit the Plaintiff's claim for the amount of **UGX 6,883,905,750/=** as the total market value of the Plaintiff's land lost to Government in the Restructuring exercise. The Admission in **P.Exh.3** is unequivocal and unambiguous. It need not to be emphasized that the expression ***"...on pleadings or otherwise..."*** as used in ***Order 13 r. 6 (supra)*** is very wide and expansive and includes letters, correspondences, and also extends to the agreed facts in the scheduling conference.

[46] In conclusion, I find that from the evidence on record, the Plaintiff is entitled to judgment on admission. I**n Civil Suit No 240 of 2015 (Masaka District Growers Co-operative union & 41 others v AG)**, the Plaintiffs sued government to recover compensation for deprivation of land in 1990

through the Ranches Restructuring exercise undertaken by the government of Uganda. Their suit was filed in 2015. Following undertakings and correspondences brought to the attention of court in which government undertook to value the land the ranchers lost in the restructuring process, court entered judgment on admission. This case is on all fours with the present case before court. The admissions by the Defendants of the Plaintiff's claim negate the Defendants' assertions of limitation, non-disclosure of a cause of action and entitle the Plaintiff to judgment on admission.

[47] Accordingly, this court enters judgment on admission for the Plaintiff as against the Defendants for the amount of **UGX 6,883,905,750/=** being compensation value for the land of the Plaintiff.

Other remedies,

Special Damages

[48] Special damages must be specifically pleaded and proved, **See Kakyomya's farm & Tea Estate Ltd V AG, HCCS No. 14 of 2005.** The Plaintiff pleaded she suffered special damages of **UGX 100,000,000/=** being the value of her destroyed fence, dip tank, valley dams and lost income. Though it is agreeable that the suit land was a Ranch, no evidence was specifically led to prove the existence of the alleged items in question and later on, their destruction. In any case, it may be taken that the items were included in the assessment and valuation of the suit property and therefore, form part of the compensation sum. The claimed sum for special damages is accordingly not granted.

General Damages

[49] In the case of **Emmanuel Turyamuhika Kikoni vs. Uganda Electricity Board, HCCS No. 021-2004**, which was cited with approval in the case of **Mohanlal Kakubhai vs. Warid Telecom Uganda HCCS No. 224 of 2011,** it was held that the damages were awarded as recompense. Further citing with approval the English case of **British Transport Commission vs. Gourley [1956] AC 185 at page 197**, the court held that,

".....the broad general principle which should govern the assessment of damages is that the tribunal should award such a sum of money as will put the injured party in the same position as he would have been if he has not sustained the injuries."

[49] The award of general damages is in the discretion of court and the law always presumes it to be the natural and probable consequence of the defendant's act or omission, See: **James Fredrick Nsubuga vs. Attorney General, H.C.C.S No. 13 of 1993' Erukan Kuwe vs. Isaac Patrick Matovu & A'nor H.C.C.S No. 177 of 2003.**

[50] In the instant case, it was argued for the Plaintiff in support of her claim for general damages that she has been following up the matter of compensation for her land for a long time. It is evident that this was inordinately too long a period from when the land was taken over to when the Defendants admitted her claim. There is no doubt that the Plaintiff was for all that period of almost twenty years denied use of that huge chunk of land without compensation. Many possibilities abound that had the Plaintiff been using his land from then to date, she would most have derived enormous financial and economic benefits. Therefore, the plaintiff certainly suffered great loss and damage; the denial of which ought to be fairly and reasonably commensurate to and reflective of the recompense she ought to receive from Government. She definitely was subjected to enormous economic inconvenience and loss at the behest of the Defendant's initial denial, intransigence and unresponsiveness to her plight. This entitles her to the award of general damages.

[51] The next issue is in respect to the quantum of the general damages that should be awarded. Counsel for the Plaintiff referred this court to the case of **Taikiya Kashwahiri & A'nor vs. Kajungu Denis, CACA No. 85 of 2011** wherein it was held, inter alia, that general damages should be compensatory in nature in that they should restore some satisfaction, as far as money can do it, to the injured Plaintiff. Further, in arriving at the quantum of damages, courts are usually guided by the value of the subject matter, the economic or other inconveniences that a Plaintiff has been put through at the behest of the defendant and the nature and extent of the

damage or loss suffered. A plaintiff who suffers damage due to the wrongful act or omission of the defendant should be put in the position he or she would have been if he or she had not suffered the loss or injury. See: **Uganda Commercial Bank vs. Kigozi [2002] 1 EA. 305; Charles Acire vs. Myaana Engola, HCCS No. 143 of 1993; Kibimba Rice Ltd. vs. Umar Salim, SCCA No.17 of 1992.**

[52] It was argued for the Plaintiff that she has suffered loss of business income as she was neither accessing her land for all that period of over twenty years nor was she compensated for the loss of the property. This too would have a strong bearing on the quantum of damages so as to restore her in a place she would have been financially. The Plaintiff asked this court to consider the fact that the land in issue is 5 square miles. This is quite a substantial chunk of land to a rancher, such as the Plaintiff, to be denied access of without occasioning to her enormous loss. Thus the basis of the quantum ought to be, among others, on the values supplied by the Chief Government Valuer when assessing compensation for the shortfall due to the Plaintiff for the land which was put at **UGX 6,883,905,750/=**. This is quite a substantial amount which if it had been paid earlier would have boosted the economic and financial fortunes of the plaintiff to a great extent.

[53] The Plaintiff also pointed out another factor that the Defendants' compulsory acquisition of her land was inherently unlawful in so far as it was done without prior knowledge and adequate compensation as required by the Constitution. To put it mildly, this amounted to impunity meted out by the Defendants on a citizen whose wellbeing and property the Government is legally and constitutionally duty bound to protect.

[54] Learned counsel for the Plaintiff argued further that the actions of the Defendants basically had negative economic and financial repercussions of great proportion to the Plaintiff. The Defendant's conduct was wanton and in utter disregard of the law of which the same Government is the main custodian. Courts of law should frown on such impunity and express their disapproval by imposing punitive and exemplary damages. Katureeba, JSC, as he then was, in his paper **Principles Governing the Award of Damages in Civil Cases** said;

"in an action where an outrage has been committed against the plaintiff by the defendant and the court forms the opinion that it should give punitive damages to register its disapproval of the wanton and wilful disregard of the law, it is entirely proper to award exemplary damages in addition to general damages and special damages, if any."

[55] This is of course not to mention the physical and physiological stress all this has exerted on the Plaintiff; an old woman and a farmer aged 77 years who on many occasions had to leave her business to attend court in furtherance of her claim. The lease Surrender Deed upon which the defendants rely on was found to be a "suspect" and therefore forged.

[56] Finally, the decision on quantum of damages is informed by other decided cases of a similar nature with the instant case. This court was referred to the cases of **Mohanlal Kakubhai vs. Warid Telecom Uganda HCCS No. 224 of 2011** in which court awarded general damages of UShs.1, 000,000,000/= for trespass to land; **Annet Zimbiha vs. Attorney General HCCS No.109 of 2011** where Shs. 350 million was awarded as general damages on the amount of compensation of Shs 3billion for land also compulsorily acquired by Government without prior compensation to the plaintiff. All factors and circumstances of this case taken together, this court was asked to award a figure of 4 billion as general damages which I consider quite high. This court considers the amount of ***Shs. 400,000,000 [Four Hundred Million Uganda Shillings only]*** to be fair and adequate general damages and I award the same to the plaintiff. Aggravated damages in the sum of **UGX 80,000,000/= (Eighty million Uganda Shillings only)** especially in consideration of the fact that the defendant officials forged the lease surrender deed thereby breaching the trust entrusted in them by the law.

Costs

[57] The position of the law under **Section 27(2) of the Civil Procedure Act (Cap.71)** is that costs are awarded in the discretion of court, and shall follow the event unless for good reasons court directs otherwise, See: **Jennifer Rwanyindo Aurelia & Anor vs. School Outfitters (U) Ltd. CACA No.53 of 1999; National Pharmacy Ltd. vs. Kampala City Council [1979]**

HCB 25. Since the Plaintiff is the successful party she is awarded the costs of the suit.

Interest

[58] **Section 26 CPA** also gives discretion to court to award interest that is just and reasonable. The guiding principle is that interest is awarded in the discretion of court, but like all discretion it must be exercised judiciously taking into account all circumstances of the case. See**: Uganda Revenue Authority vs. Stephen Mbosi, SCCA No. 26 of 1995; Liska Ltd. vs. DeAngelis [1969] E.A 06; National Pharmacy Ltd vs. Kampala City Council [1979] HCB 256.**

[59] In **Annet Zimbiha vs. Attorney General Case (supra)** this court had occasion to hold, inter alia, that;

"A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries of inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due."

[60] The Plaintiff prayed for interest at a rate of 25% p.a on the pecuniary reliefs. This court awards the Plaintiff interest at a rate of **15% per annum** to the admitted claim and on damages from the date of judgment until full payment.

[61] In conclusion, judgment is entered for the Plaintiff against the Defendants jointly and severally for:

a) An order that the Defendants compensate the Plaintiff for the loss of her land in the sum of **UGX 6,883,905,750/= (Six billion eight hundred eighty three million nine hundred and five thousand seven hundred fifty Shillings only).**

b) Special damages for destruction of the alleged fence, dip tank and valley dam are not granted for lack of proof.
c) General damages in the sum of **UGX 400,000,000/= (Four hundred Million Uganda Shillings only)**
d) Aggravated damages of **UGX 80,000,000/= (Eighty million Uganda Shillings only)**
e) Costs
f) Interest at a rate of **15% pa** on the compensation amount, general damages, aggravated damages and costs from the date of the delivery of this judgment till payment in full.

Dated at Masindi this 20th day of October, 2022.

Byaruhanga Jesse Rugyema
JUDGE.