

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
CIVIL SUIT NO. 015 OF 2020

NABAWEESI GERTRUDE ::: PLAINTIFF

VERSUS

UGANDA NATIONAL ROADS AUTHORITY ::: DEFENDANT

BEFORE: HIS LORDSHIP HONOURABLE JUSTICE OYUKO ANTHONY OJOK.

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RULING ON PRELIMINARY OBJECTION

The plaintiff brought this suit against the defendants for:

1. A declaration that the defendant undervalued the plaintiff's property comprised in Mawokota Block 92 Plot 35 land at Mpami.
2. A declaration that the defendant misrepresented the plaintiff at the compensation process.
3. An order that the defendant pay the plaintiff full and adequate compensation in respect of property comprised in Mawokota Block 92 Plot 35 land at Mpami.
4. General damages.
5. Costs of the suit.

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BRIEF FACTS:

The facts constituting the cause of action as discovered from the pleadings of the plaintiff briefly are; that the defendant in 2014 commenced construction of the Mpigi-Maddu Ssembabule Road Park Village, Mpigi Town Council in Mpigi District and in the same year the defendant mutated off the area that affected the plaintiff's property and valued it at 38,610,000/= (Uganda Shillings Thirty-Eight Million Six Hundred Ten Thousand). After taking the portion of the formed part of the plaintiff's property, the defendant threatened to demolish her house without being fully and adequately compensated and upon that on the 16th day of April 2018 the plaintiff brought her concern to the defendant's office which was ignored. The plaintiff further lodged another complaint on the same to the defendant through her lawyers on the 16th day of October 2018 for a re-assessment and valuation for purposes of fully and adequately compensating her property but the same was ignored. That the plaintiff instructed her own valuers in 2019 and found out that her land and commercial building thereon is in the region of UGX 105,000,000/= (Uganda Shillings One Hundred

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Five million). The plaintiff states that her land was undervalued as no valuation report was prepared, she wasn't involved in the assessment and as such, she wasn't fully and adequately compensated. That she was misrepresented to believe that her property was not to be demolished and prays to this court for an order to instruct valuers to carry out a fresh valuation and come up with clear and exact valuation report.

REPRESENTATION:

The plaintiff was represented by Lwanga Richard of Mukiibi & Kyeyune Advocates while the defendant was represented by Pecos Mutatina of the Directorate of Legal Services, Uganda National Roads Authority.

SUBMISSIONS;

Counsel for the defendant raised a preliminary objection that the suit is incompetent as it was filed out of the provided timelines under Section 13 of the Land Acquisition Act. The plaintiff's land was affected by the Mpigi- Kanoni road. The land was compensated and the award was given by 21st March 2014. That the plaintiff appended her signature on the form and based on that form, the defendant paid by 22nd July 2014. However, more than sixty days, the plaintiff filed the suit challenging the award as being inadequate in 2020.

Counsel further submitted that the section provides for sixty days for any aggrieved party to appeal to the High Court challenging the award. That the plaintiff ought to have brought this suit two months from the award but she sat on her rights and brought the suit more than five years after receipt of the compensation. Counsel for the defendant thus submitted that the plaintiff's claim in the suit is incompetent and time barred.

Counsel for the defendant cited the case of Mohamed Mbabazi V Uganda National Roads Authority Misc. Application No. 346 of 2020 where the applicant sought to challenge the award and his Lordship Phillip Odoki dismissed the application that it was time barred and an abuse of court process. Counsel prayed that the suit against the defendant is incompetent and time barred and that the same be dismissed with costs to the defendants.

In reply to the preliminary objection, Counsel for the Plaintiff submitted that section 13 of the Land Acquisition Act and the decisions cited by the defendant doesn't apply to the instant case because the plaintiff isn't complaining that she didn't get the total amount of UGX 38,610,000/= the plaintiff is also not objecting to the apportionment of the compensation and she isn't objecting to the failure to or refusal of the assessment officer to include her in the apportionment. That the plaintiff was and is still aware that the said UGX. 38,610,000/= that was being compensated for

was in respect of the area that was taken up by the road and she has no issue with it. That the plaintiff retained her certificate of title and wasn't told that her house was to be demolished and that she remained in possession of the same renting it to tenants and it was when she had gone to collect rent in 2018 when she was told by the tenants that they won't give her money since UNRA threatened to demolish the premises (commercial shops) and that they had to prepare where to go.

10 Counsel for the plaintiff in reply further stated that the plaintiff is complaining about the threatened demolition of her house without being compensated for the same and if section 13 of the Land Acquisition Act is to apply that the plaintiff was duly compensated, then the defendant didn't comply with the proper procedures in the process of assessment and evaluating of the plaintiff's remaining land together with a house to reach a proper compensatory amount.

20 Counsel submitted that the payment of the approved compensation to the projects affected persons and the payment forms are all written in English and there is no English translation to that effect as required by Section 3 of the Illiterates Protection Act which requires any person who writes a document for or at the request or on behalf of an illiterate person to write in the jurat of the said document his or her true and full address. That the act of the plaintiff writing to the defendant in a letter dated 16th April 2018 demanding for compensation for her house before demolishing the same alludes to the fact that she didn't understand the document she put up a thumb print since she is an illiterate. Counsel relied on the case of Violet Nakiwala & Ors V Ezekiel Rwekibbira & Anor Civil Suit No. 280 of 2006 where Justice Bashaija held that section 2 of the Illiterates Protection Act provides for verification of the illiterate's mark on any document, and that prior to the illiterate appending his or her mark on the document it must be read over and explained to him or her.

30 Counsel stated that failure to translate the documents to the plaintiff intimating to her and herself acknowledging the fact that her house was to be demolished basing on the UGX. 38,610,000/= only isn't enough to show that she sat on her rights and prevent her from being heard by the Limitation period of section 13 of the Land Acquisition Act.

In rejoinder, Counsel for the defendant stated that the authorities cited by the plaintiff's counsel are distinguishable from the facts at hand. That the documents in contention for which translations were required are an affidavit and a power of attorney if written on or behalf of an illiterate. That on the other hand, standard documents such as the defendant's form B, receipts, tickets and many others of a similar nature do not require translation by virtue of their standard formats.

Counsel for the defendant also reiterated their earlier submissions that the plaintiff's suit is incompetent and time barred, it having been instituted outside the sixty days

provided for under section 13 of the Land Acquisition act and accordingly pray that this honorable court be pleased to dismiss the same.

RESOLUTION BY COURT;

I have carefully read and considered the submissions by both counsel, the details of which are on court record and contents of which I have taken into account in addressing the preliminary objection raised by Counsel for the defendant.

Section 13 of the Land Acquisition Act which is the subject of this preliminary objection provides that where an award is made under section 6, any person awarded or claiming that he or she should have been awarded compensation may within sixty days of the date of the award appeal to the High Court by way of objection to any or all the following-

- (a) The total amount of compensation awarded;
- (b) The apportionment of the compensation;
- (c) Any failure or refusal of the assessment officer to include him or her in the apportionment.

The plaintiff in this case didn't file any appeal against the award within the time limit stated in the act. She accepted compensation of UGX 38,610,000/= for her property and put her thumb print on the documents which in this case amounts to her signature. If at all the plaintiff was dissatisfied with the award, she shouldn't have accepted the compensation award or she should have appealed to this Court within the time limit of sixty days as provided for by section 13 of the Land Acquisition act. She cannot, through this suit challenge the compensation awarded to her when she should have done so but sat on her right until the time of appealing had passed.

I agree with the case of **Mohmed Mbabazi V Uganda National Roads Authority Misc. Cause No. 346 of 2020** as cited by Counsel for the defendant where my learned brother Justice Phillip Odoki dismissed a similar application on grounds that it was time barred and an abuse of Court process.

I am also persuaded by the decision of my learned sister Justice Alexandra Rugadya Nkonge in the case of **Godfrey Ssenyonga Wagweeku V Uganda National Roads Authority Civil Suit No. 653 of 2016** when she held that "from the provision of section 13 of the act, compliance with time prescribed for laying such a claim was an essential element to the appeal. A court would thus be inclined to believe as genuine that person who considers himself aggrieved and does not lie back and sit on his rights. He or she must act promptly to seek for a remedy to redress the injustice."

The plaintiff sat on her right from the 21st March 2014 when she became aware and accepted the compensation. She states that she lodged a complaint to UNRA, but that

complaint was lodged in 2018 which is also 4 years after the award was given and this too was out of the time limit. The plaintiff could have brought this suit within 60 days but that wasn't done, she filed this suit in 2020 almost 6 years after the time allowed to appeal had expired which makes this suit incompetent.

I am bound by the decision of the Court of Appeal in **Mohammed B Kasasa V Jasphar Buyonga Sirasi Bwogi Civil Appeal No.42 of 2008**, where court held that, "statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is interest reipublical ut sit finis litum meaning that litigation shall be automatically stifled after a fixed length of time, irrespective of the merits of a particular case. That the statute of limitation is not concerned with merits, once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course to insist on his strict rights."

I am not persuaded by the submission of Counsel for the plaintiff when he stated that failure to translate the documents to the plaintiff intimating to her and herself acknowledging the fact that her house was to be demolished basing on the UGX. 38,610,000/= only isn't enough to show that she sat on her rights and prevent her from being heard by the Limitation period of section 13 of the Land Acquisition Act.

The plaintiff had a right to look for a lawyer before signing any documents or putting her thumb print for compensation that she didn't understand. She also had a right to bring this suit within 60 days as stated in Section 13 of the Land Acquisition Act but she didn't do that either. Furthermore, when you look at the valuation report, valuation was for everything including demolition of the plaintiff's property and the plaintiff cannot state that she got the award unknowingly that her property would be demolished for the road to be constructed. Therefore, the plaintiff cannot hide under being an illiterate for over six years from the time she got the award.

I entirely agree with the submission of Counsel for the defendant when he stated that the documents in contention for which translations were required are an affidavit and a power of attorney if written on or behalf of an illiterate. That on the other hand, standard documents such as the defendant's form B, receipts, tickets and many others of a similar nature do not require translation by virtue of their standard formats.

Before I take leave of this matter, I would like to caution the Defendant that as much as I agree with them, next time they should be more vigilant to take the title of any person they have compensated to avoid unnecessary mistakes that would lead to litigation.

Therefore, I am inclined to uphold the preliminary objection of counsel for the defendant, I find that this suit is time barred and an abuse of court process, I accordingly dismiss it with costs to the defendant. I so Order.

Right of Appeal explained.



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OYUKO ANTHONY OJOK

JUDGE

10 **23/02/2022**