

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]**

HIGH COURT CIVIL SUIT NO.103 OF 2010

SHEEMA COOPERATIVE RANCHING SOCIETY & 31 OTHERS :::::PLAINTIFFS

VERSUS

THE ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

Introduction:

The Plaintiffs jointly and severally filed this suit against the Attorney General in his representative capacity as a Statutory Defendant for allegedly illegal actions of the officials of Government of Uganda against them when they allegedly grabbed their land and illegally and unilaterally parcelled them out to other people without fair, adequate and prompt compensation.

The Plaintiffs in their amended plaint sought for:-

- (i) A declaration that they are entitled to a fair, timely and adequate compensation for their respective tracts of land that was trespassed upon and permanently alienated from them by officials of Government of Uganda.

- (ii) A declaration that the valuers in the Valuation Report commissioned by the Chief Government Valuer as a basis for their compensation are neither fair nor adequate as basis for compensation.
- (iii) An order that compensation should be based on the more up to date Valuation Report commissioned by themselves.
- (iv) In the Alternative but without prejudice, that interest at commercial rate be awarded to them from the date of trespass to their land to the date of judgment.
- (v) An order that general damages for trespass and inordinate delay of compensation be paid to the Plaintiffs.
- (vi) Costs of the suit.

The Plaintiffs' case:

The Plaintiffs were the registered proprietors of the various pieces of leasehold land comprised in the Ankole-Masaka Ranching Scheme whereupon they carried out business of cattle, beef and dairy farming. By a General Presidential Notice No. 182 of 1990, the Defendant established the Ranch Restructuring Board whose mandate among other were to forcefully confiscate, acquire and take over the land belonging to the Plaintiffs and redistribute it to other people unknown and unrelated to the Plaintiffs. The Board was also mandated to recommend the adequate compensation for the land so acquired and allocated. In pursuance to the above mandate, the Defendant through the Board personnel did forcefully enter on to the Plaintiffs' respective ranches and parcelled out various acreages of land and redistributed it to various people who have continued to occupy and are still in occupation of those lands.

In February 2005, the Defendant commissioned a valuation of all the pieces of land that were confiscated from the Plaintiffs and compiled a report to form the basis for the compensation of the Plaintiffs. In spite of the fact that the Defendant had commissioned and obtained the Valuation Report in August 2005, the Defendant kept the Report a secret and hidden from the Plaintiffs and no payments were effected despite repeated complaints. The Plaintiffs then contacted the Ministry of Lands, Housing and Urban Development for the fate of their compensation and the Permanent Secretary in a letter to the Plaintiffs intimated that payments would be effected in the Ministry's fiscal year 2009/2010. In early 2009, the agents of the Defendants started selectively contacting some of the Plaintiffs and asked them for their bank accounts (details) whereupon money was deposited. The money was purportedly compensation for the land lost. However no disclosure was made by the Defendant to the Plaintiffs on how much was actually due to them and the basis for the compensation. Upon inquiry from the Ministry of Lands for the basis of computation of their compensation, the Plaintiffs were informed that the basis was the Valuation Report commissioned by the Government. Upon perusal of the Report the Plaintiffs found that the Report had recommended miserable and ridiculous payments some of which were as low as Shs.90,000/= per acre. The Plaintiffs also discovered that the Government valuation did not make provisions for disturbance allowance and allowance for injurious affection. The Plaintiffs engaged their own valuer who revalued the land and produced a Valuation Report reflecting the actual value of the land, loss and what should constitute their compensation.

The Defendant's case:

The Defendant filed an amended Statement of Defence on 3rd May, 2011 in reply to the amended plaint. The Defendant denied the unlawful acquisition of the suit property and contended that the same 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 as indicated in the legal Notice contained in the Uganda Gazette of 12th October, 1990. It was contended that the compensation awards were fair and adequate having been assessed by an Independent valuer commissioned by Government. It was further contended that there was no inordinate delay by Government as it was still undertaking a review of all claims and required among others, proof that the claimants had surrendered their original titles of the Ranches to Government prior to payment. It was averred further that some claimants opted to hold onto their titles for reasons best known to them, while others delayed to surrender them, hence delaying the processing of their compensation. Further, it was contended that the Plaintiffs who willingly opted to surrender their old titles, accepted and actually received the compensation awarded by Government without any grievance, are stopped from making further claims in respect of the same land at the current market value. It was also contended that all the Plaintiffs who were compensated had knowledge of the amounts the Government had offered to each of them prior to payment having freely accessed the contents of the Valuation Report. In conclusion, it was averred that the assessed compensation was fair, adequate and was paid to the Plaintiffs in a transparent manner, whereupon additional claims by the Plaintiffs are misconceived and should be dismissed.

Agreed facts and issues:

On 3rd March 2011 at the pre trial scheduling the following were agreed.

Facts:

1. The Plaintiffs are presumed lawful owners of the pieces of land pending provision of proof of ownership.
2. The said land in issue was taken/slashed/acquired from them by government and allocated to other people.
3. The acquisition of the said land was done before the Plaintiffs were compensated.
4. In August 2005 Government commissioned the valuation of the suit land for purposes of compensation.
5. Subsequent to the Report, some payments were made to the Plaintiffs.
6. The Plaintiffs also commissioned their own valuation in 2010.

Agreed Issues:

- (1) Whether or not the acquisition of the Plaintiffs' pieces of land in issue by Government was lawful.
- (2) Whether the compensation offered by Government pursuant to the Valuation Report of 2005 was adequate in the circumstances or whether the Plaintiffs are entitled to compensation on the basis of their own Valuation Report.
- (3) Remedies available to the parties.

At the trial the Plaintiffs produced the following witnesses in proof of their case:

(1) Pw₁ Mr. Roberts Rutehenda.

(2) Pw₂ Dr. Ochwo Ochieng Ojomoko, a Senior Housing Economist and Consultant Valuation Surveyor working with the Ministry of Lands and Urban Development.

(3) Pw₃ Mr. Noowe Hannington Kanyamunyu, a representative of one of the Plaintiffs.

(4) Pw₄ Mr. Hada Roberts Rubahimbya, a representative of one of the Plaintiffs.

(5) Mr. Stephen Kamuhanda, one of the Plaintiffs.

The Defendants on their part produced two witnesses.

(i) Dw₁ Mr. Clovince Muhumuza, a Senior Assistant Secretary in Ministry of Lands and Urban Development, and

(ii) Dw₂ Mr. Solomon Balinda Birungi, a valuation surveyor working with RESCO Property Consultants that had valued the Plaintiffs' land.

Plaintiffs' evidence:

Robert Rutehenda Pw₁ testified inter alia that he was the occupant of Ranch No.9 Ankole Ranching Scheme where he has been since 1965. The Ranch had 5 square miles where he had a lease of 49 years. In 1989 Government of

Uganda formed Ranch Restructuring Board which visited his Ranch and counted his animals which were 600 heads of cattle. The Board then informed him that they were going to reduce his Ranch by 2 square miles and that he was to be adequately compensated.

In early 1990s Government then brought in squatters with their cattle on his ranch. He complained to the Police because his cattle were dying because of the intruders. The Board reassured him that he was going to be compensated. However, he waited for 11 years before he could be compensated.

Between 2007 – 2008 he handed in his title and he was told to go to the Land Office to receive his compensation. He was told to sign documents but was never told how much he was to be paid. He was told to check on his bank account where he found Shs.120,000,000/= which he considered peanut compared to what he lost. He stated that in 2002 he had put his claim at Shs.380,000,000/=. He concluded that land around the Ranch is now going at Shs.1,000,000/= (one million per acre).

Dr. Ochwo-Ochieng Ojomoko Pw₂ testified that he was a consultant valuer. He testified that the Plaintiffs contacted him to carry out valuation of their ranches which had been compulsorily acquired by Government between 1990 – 2010. He stated that by that time some valuation had already been done by another surveyor called RESCO in 2005. He testified that the Report by RESCO had certain things missing according to the surveyors' ethics. First, the rate used were so low. The rate used was 29-6 Shillings per meter square i.e. 296,000/= per acre which was too low and could not buy land in that area. The correct figure should have been 90 Shillings per meter square i.e. 375,000/= per acre i.e. between 2005 – 2006.

Secondly, there was no provision for disturbance allowance and allowance for injurious affection. Lastly he testified that he based his Report on the RESCO Report and other agreements which were made available to him within that area.

Pw₃ Noowe Hannington Kanyamunyu testified that he was occupant of Ranch No.11 which was 5 square miles which was one of the Ranches which had been restructured. After the restructuring he remained with 2 square miles. When the local people learnt that Government was restructuring the Ranches they started entering his Ranch which affected proper management of the farm. Later Government informed him that he was to be compensated for the restructuring. He stated that he was compensated in 2011 but was not satisfied with the amount paid. Even the amount of compensation was not disclosed to him before payment.

Pw₄ Robert Hada Rubuhimbya testified that he was in occupation of Ranch No.8 Kihura District which was restructured whereby Government took 1 ½ (one and a half) square miles i.e. 404 hectares. After the take-over he bought land about three miles from the Ranch and paid 38 million for the 50 acres. He stated that Government paid him Shs.98 million purportedly in compensation which he found ridiculous because it was too low. He concluded that he was not satisfied with the compensation which was not even communicated to him. He just heard rumours about compensation and then found the money deposited into his bank account.

During cross-examination he stated that the land was taken in 1992 but he handed over title in 2010. He stated that between 1992 – 2010 they were still waiting for Government to compensate them. He stated that he was compensated in 2011.

Pw₅ Steven Kamuhanda testified that he was the owner of Ranch No. 45 Mawogola which was 5 square miles where he had his cattle. In 1990 the same was invaded whereby the local people wanted to kill him. Later on 29/4/1991 some invaders drove cattle into his ranch. He wrote to the Minister of Agriculture and Animal Resources giving copies to many people, including the President but no assistance was realized. Later on Ranch Restructuring Board called him for a meeting chaired by David Pulkol. Pulkol told him that he was to lose 2 square miles but to be paid compensation for the loss. That meeting was organized around 1992. From there he was ordered to surrender his title. He wanted to refuse but realized that fighting Government was a losing battle. So he decided to send the title to Wandegeya. From 1992 he waited for compensation until around 2009 when some payment was made. He was not told how much was going to be paid. They first paid 12 million as damages and later made final payment of 112 million. He testified that Government should pay compensation because it took their land illegally. He concluded that by 2009 land around Sembabule was 1 million per acre.

Defence evidence:

Dw₁ Muhumuza Clovis, Senior Assistant Secretary in the Ministry of Lands, Housing and Urban Development and Desk Officer for Ranches and Personal Assistant to the Minister, testified that he knew of the Plaintiffs who were contesting compensation award following the restructuring of the Ranches. He told Court that the Ranches were established by Government in 1960 – 1970s with the help of USAID. Government cleared off the area of Tsetse flies. Later demarcation into ranches were done and infrastructures like paddocking, valley dams and perimeter fencing were done. Later Government allocated the ranches to people with specific covenants on how to be used and managed breach of which the lessor had powers to withdraw the ranches. Around 1975

due to instability ranching activities slowed down. Some ranches abandoned the ranches. Some ranches breached the covenant by sub-dividing the same. Others which were idle were encroached on by some people. The status quo remained until the coming in power of the NRM in 1986. Conflict intensified between the ranchers and encroachers.

In 1988 Government commissioned an inquiry by Prof. Mugerwa to look at the ranches whether they were following the covenants, how many animals they had and the extent of encroachment and viability of business. The Mugerwa Report recommended on each ranch what should be done on each ranch, running from the size to be retained and what to be given out. Those who had not made any developments lost the entire ranches. The Mugerwa Report formed the basis of Government restructuring of the ranches. Restructuring entitled the dividing of the ranches into two parts. Part A retained by the Ranchers and Part B shared by squatters. The restructuring was completed and took effect on 1/5/1992.

From 1992 Government went ahead and formed the Ranching Restructuring Board charged with responsibility of helping those allocated land to acquire title and also to reallocate other land which had remained but not claimed by the Board. The Board completed its work in 1997 and was replaced by the Ranches Committee. When the restructuring was complete it was held by Government that ranchers be compensated for the developments they had made on the ranch but not the land because Government felt that they had prepared and laid down infrastructures on the land and allocated to the farmers at no payments. Consequently the developments which the Ranchers had made on the part surrendered to Government were valued and fully compensated by 2002. However later the Ranchers started agitating for compensation for land which

Parliament succumbed to and made a resolution to that effect which the cabinet endorsed under CT (1999) 152.

From there the process of compensation went on smoothly and the Plaintiffs were duly compensated according to the conditions set by surrendering land titles, following valuation carried out by RESCO.

Dw₂ Solomon Balinda Birungi testified that he was a Valuation Surveyor practicing under RESCO Property Consulting Surveyors. He testified as to the manner in which he carried valuation survey in respect to the Ranches which were restructured.

He stated that he made his assessment of compensation and filed its report dated 11/8/2005. He stated that he considered the market value of the area in the community. He testified that Dr. Ocho-Ochieng Ojomoko was wrong to review another surveyor's assessment. He stated that Dr. Ogomoko had no Practicing Certificate because he was not on the list of surveyors. He denied that his rate was too low because he gave the methodology, made consultations and came out with the value stated in the Report. He stated that injurious affection was only applicable when the land left was too small or uneconomically viable for development so as to force the Government to take it all. However in the instant case the land left were adequate for ranching. He concluded that their valuation was adequate for the compensation arrived at according to the principles and guidelines issued by the Ranching Board.

Resolution of issues:

Issue No. I: Whether or not the taking over of the Plaintiffs' land was lawful.

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”

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 persons shall be compulsorily deprived of property except where the following conditions are satisfied:

(a) *Where the taking of possession or acquisition is necessary for*

- *public interest*
- *in the interest of the defence*
- *public safety*
- *public health*

(b) *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.”*

Article 237 of the Constitution Government can only take over someone’s land if it is in the interest of the public. In **Bhatt & Another v Habib Rajani [1958] EA** 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.

Thus **Article 26 and 273 of the Constitution** only allows Government to use its coercive power to force a transfer in public interest and upon fair and 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 thereon 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.

In the instant case the evidence on record clearly shows that the Plaintiffs' Ranches were 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 as indicated in the General Notice contained in the Uganda Gazette of 12th October, 1990.

According to the establishing of the Ranches Restructuring Board Notice, 1990, Section 4(1) thereof, the functions of the Board were to implement the Resolution of the National Resistance Council of the 24th August 1990 in relation to Government allocation of Ranches in Ankole, Masaka, Singo, Buruli and Masindi with a view of facilitating the following:-

- (a) The revocation by the Government of leases of those ranches which have not been developed by the lessees in accordance with the prescribed terms and conditions of allocation;
- (b) The restructuring and sub-division of existing ranches into appropriate units and;

(c) The orderly and harmonious re-settlement of squatters within the areas covered by the ranches.

On the face of the above objectives, it would be correct to say that the policy of the Government was lawful because it was an issue of public interest. However the law requires that certain procedures ought to be followed before compulsory acquisition can be lawful.

In the instant case, it was the contention of the Plaintiffs that before Government came out with the policy, Government had already allowed squatters to settle on parts of their ranches with their cattle. Government inspired the encroachers and even protected them from being evicted by the Plaintiffs. In a nutshell, Government did not follow procedure of acquisition of the suit land. Such a procedure is regulated by the **Land Acquisition Act Cap 226**.

Under **Section 3(1) of the Act** when the Minister is satisfied that any land is required by Government for a public purpose, he is required to make a declaration to that effect by statutory instrument.

Pursuant to **Section 3 (3)** the Minister should then cause a copy of the declaration served on the registered proprietor of the land specified in the declaration or the occupier or controlling authority.

Section 4 requires the land to be marked out by an assessment officer and measured and a plan of the land be made if the plan of the land has not already been made.

Section 5 requires persons having an interest in the land to be given notice. The section requires the Assessment Officer to publish the notice in the Gazette and exhibit it at convenient places on or near the land stating that the Government intends to take possession of the land and that claims to compensation for all interest in the land be made to him or her.

As per **Section 6**, the Assessment Officer upon publication of the notice then proceeds to hold an inquiry into claims and rejections made in respect of the land and then make an award specifying the true area of the land and compensation to be allowed for the land.

The Assessment Officer should then serve a copy of the award on the Minister and on those persons having an interest in the land and the Government then pays and compensate in accordance with the award (**Section 6 (4)**).

Under **Section 7** the Assessment Officer shall take possession as soon as he has made the award. However the officer may take possession at any time after the publication of the declaration if the Minister certifies that it is in the public interest for him to do so.

In the instant case, the circumstances under which the Plaintiffs' land was taken was not in conformity with the provisions of the Act and the Constitution. The instrument creating the Ranch Restructuring Board published in the Gazette in September 1990 was published after the land had already been invaded. Even the Gazette did not amount to a Statutory instrument as envisaged in **Section 3 of the Act**. The Gazette was actually dealing with the after effects of the invasion as if to legalise the otherwise illegal occupation that had already been perpetuated by government agents.

In **KULDIP KRATAURA v The Law Development Centre {1978} HCB 296**, the Plaintiff in that case was a registered proprietor of land with a house therein. She let it out on rent to the Defendant, in 1974 who paid rent up to February, 1976 and thereafter failed to pay and vacate the premises. The Plaintiff brought this action for recovery of arrears of rent for mesne profits from November, 1976 till delivery of possession, and the delivery of the premises.

The Defendant admitted that the suit property were let out to them for rent but stated that the agreement for rent had come to an end when the Defendant notified compulsory acquisition of the property under the **Land Acquisition Act, 1965 by Statutory Instrument No. 2 of 1973** that for a public purpose and that the instrument was deemed to have come into effect from 1st April, 1973. **Akhun J, J.** held inter alia that under **Land Acquisition Act 1965**, there was no power given to the Minister to make a declaration that any land is required by Government for public purpose with retrospective effect. Therefore the said Statutory Instrument was ultravires of the power of the Minister and was illegal.

As properly contended by the learned Counsel for the Plaintiffs, the Statutory Instrument which was made after the invasion of the squatters was a mere mask to cloth the compulsory acquisition with legality. Otherwise what transpired between 1998 and 1990 was utter arbitrary, ruthless, violent and abusive affront to the Plaintiffs' right to property as envisaged under the Constitution.

Furthermore, the process of compensation was also not transparent as provided by the Act. The persons affected did not know what was taking place. They were not approached to air their stand and the award given for

compensation was not disclosed. Generally the process was a mere junk without following the clear provisions of the Act and the Constitution.

In view of the above circumstances, I find that the taking of the Plaintiffs' land by the Defendant was unlawful although the Defendant had a noble objective to resettle the landless.

Issue No. 2: Whether or not the compensation offered by the Government pursuant to the Valuation Report of August 2005 was adequate or whether the Plaintiffs' are entitled to compensation on the basis of their own Valuation Report.

Under **Article 26 (2) (b) of the** Constitution, compulsory acquisition of property can only be made under a law which makes provision for prompt payment of fair and adequate compensation prior to the taking of possession.

Upon restricting the Ranches, Government of Uganda committed itself to compensating the affected Ranchers who had been allocated Government Ranches. The valuation exercise carried out by RESCO indicated that the basis of the valuation for compensation was the market value.

In **Buran Chandmary vs The Collector under the Indian Land Acquisition Act (1894) 1957 EACA 125** it was held that the market value of land is the basis on which compensation must be assessed and the market value of land as the basis on which compensation must be based is the price at which a willing vendor might be expected to obtain from a willing purchaser. A willing purchaser is one who although may be a speculator is not a wild or unreasonable speculator.

I have noted the factors upon which the assessment of the market value were based. However, the said assessments were made in 2005 while payments commenced in 2009. According to the Constitution compensation must be fair adequate and paid promptly. It was admitted by **Dw₂ Solomon Balinda Birungi** that the valuation which he made in 2005 did not reflect the market value of 2010. It therefore becomes clear that compensation which the Plaintiffs allegedly received in the year 2009 – 2010 did not reflect the market value of the land, hence it was neither fair, adequate nor prompt.

Furthermore, the award did not consider disturbance allowance. The Plaintiffs testified that they were settled on the Ranches where they were rearing cattle and goats. Some of them had added their developments on the Ranches. They were accordingly entitled to disturbance allowance as they moved to leave the restructured area. The Defendant contended that disturbance allowance was in built in the values awarded to the Plaintiffs and they put it at 30% in their Report. Upon perusal of the Report I fail to see what percentage was inbuilt in the awards. It should have been indicated that Amount awarded was x plus disturbance allowance of 30% to total amount XY. That was not shown and I think that was a professional oversight by the Defendant in failing to award the Plaintiffs disturbance allowance of 30%.

Another area of discontent was that the Defendant did not award the Plaintiff injurious affection. Injurious affection is defined by **Megarry's Manual of Real Property 6th Edition** as injury to other land caused by the acquisition.

The Defendant argued that they did not consider injurious affection because it only applies when the land left is too small to carry out the intended development. They contended that the land left after restructuring was

adequate for ranching. A sample look at the RESCO Report shows the original area of the land, land lost to Government and land retained by the Ranchers:

(a) Ranch No. 1

- Original area	-	1406 hectares
- Land lost	-	321 hectares
- Land retained	-	1305 hectares

(b) Ranch No. 7

- Original area	-	1688 hectares.
- Land lost	-	912 hectares.
- Land retained	-	776 hectares.

The above clearly shows that the Ranchers/Plaintiffs retained sizeable chunks of their land which could still sustain ranching activities hence there was no need for them to be awarded injurious affection.

In conclusion, I find that the compensation award offered by Government pursuant to the Valuation Report of August 2005 was outdated and insufficient and inadequate since it was not based on the open market value and disturbance allowances were never considered.

Whether the Plaintiffs are entitled to compensation award on the basis of their own Valuation Report:

The Plaintiffs engaged a one Dr. Ojomoko **Pw₂** who carried valuation of their ranches to determine the market value of their ranches. However, the professional competency of Dr. Ojomoko was put in contempt by the Defendant

who argued that the said valuation surveyor was not a registered valuation surveyor. According to Surveyors Registration Act every recognized surveyor must have a Practicing Certificate after registration under **Section 19 of the Act**. The above section provides that no person shall engage in or carry out the practice of surveying unless he or she is a holder of a valid Practicing Certificate granted to him or her.

The evidence that Dr. Ojomoko was not a registered surveyor and did not possess a Practicing Certificate was not challenged. It therefore follows that without valid Practicing Certificate Dr. Ojomoko **Pw₂** could not carry out the practice of surveying. Therefore whatever he purported to do in the form of valuation surveying of the Plaintiffs' ranches were illegal and contrary to the mandatory provisions of **Section 19** of the above Act. As rightly stated in **Makula International v Cardinal Nsubuga & Another [1982] HCB 11** Court cannot sanction what is illegal and illegality once brought to the attention of Court overrides all questions of pleading, including admissions made thereon.

In conclusion the law is that all surveyors whether working with Government or in private organizations must register and be in possession of Practicing Certificate. Since the Plaintiffs' valuation was surveyed by a person not recognized by the Board of Surveyors according to the Surveyors Registration Act, that valuation could not be a basis for the Plaintiffs' compensation.

Issue No.3: Remedies available:

(a) Market value:

In view of my conclusions on the issues above, it is just and fair that a fresh revaluation of the Plaintiffs ranches be done by an independent valuer chosen

by Court (Registrar) whose work shall be confirmed by the Chief Government Valuer. The value arrived at shall be less the amount which the Defendant had deposited in the Plaintiffs' accounts. The market value should be that of 2010.

(b) General Damages:

From the facts and circumstances of this case, it must be appreciated that the action taken by government was to resettle the landless cattle keepers who were forced by circumstances to invade the Ranches and also to streamline the activities of the Ranchers according to the covenants in the tenancy. Therefore in a way, the restructuring was for the benefits of all the stakeholders and once prompt, fair and adequate compensation is paid, it would not be necessary to award general damages. The spirit in the claims of the Plaintiffs and evidence leans more on the inadequacy of the compensation award and not the injuries suffered. Once Government committed itself to paying compensation my view is that this Court should ensure that the process is reopened and harmonised to enable proper market value to be determined. It is also my view that the circumstances under which Court awarded general damages in **Rwanyarare v Attorney General, HCCS No. 95 of 2001** and **Byanyima v Attorney General HCCS No. 359 of 1996** were different. In the above cases the Plaintiffs proved that the acts of the Government agents clearly called for award of general damages because of the injuries and loss they suffered and they did not opt to be compensated.

It is therefore my conclusion that once the Defendant is made to comply with the law in regard to compulsory requisition, there would be no need for the award of damages since the Plaintiffs would be entitled to get the market value of the property they lost including disturbance allowance.

(c) Costs:

The Plaintiff is entitled to the cost of this suit and interest on the costs at Court rate until its payment is made.

In conclusion, judgment is entered for the Plaintiffs with costs in the following terms:

- (a) A declaration that the Plaintiffs are entitled to a fair, timely and adequate compensation for the land alienated by Government.
- (b) Valuation Report commissioned by the Chief Government Valuer as a basis for compensation was neither fair nor adequate as a basis for compensation of the Plaintiffs.
- (c) An independent valuer appointed by Court (Registrar) be commissioned to carry out fresh valuation to determine the market value of the property as between 2009-2010. The amount determined to be less the amount paid to the Plaintiffs. The award to be confirmed by the Chief Government Valuer.
- (d) Costs of the suit and interest on it at Court rate until payment in full.
- (e) The exercise to be completed within three months from to date.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

27/2/2013

Judgment delivered in the presence of:

(1) Mr. Niinye Francis, assisted by Mr. Karuhanga Justus and Mr. Katutsi Peter for the Plaintiffs.

(2) Mr. Batanda Gerald (SA) for the Defendant.

(3) Mr. Atwiine Steven representing the 7th Plaintiff, Mr. Nyakairu Denis representing the 8th Plaintiff, Mr. Dawa Jesse representing the 9th, 10th, 11th Plaintiffs, Mr. Abaho Edgar representing the 28th Plaintiff and Mr. Kansiime Martin representing the 32nd Plaintiff.

Court Clerk – Ms. Aidah Mayobo.

HIS WORSHIP FESTO NSENGA

ASSISTANT REGISTRAR

27/2/13