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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 38 OF 2016**

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**PROF. EPHRAIM RWABU KAMUNTU ::::::::::::::: PLAINTIFF
VERSUS
ATTORNEY GENERAL OF UGANDA ::::::::::::::: DEFENDANT**

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BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

JUDGMENT:

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Prof. Ephraim Rwabu Kamuntu (*hereinafter referred to as the plaintiff*) brought this suit against the Attorney General of the Republic of Uganda (*hereinafter referred to as the “defendant”*) seeking a number of remedies. At the commencement of the hearing of the case, the plaintiff filed *HCMA N.o.180 of 2016, Prof. Ephraim Rwabu Kamuntu vs. The Attorney General*, contending that the defendant substantially admitted to the plaintiff’s claim of compensation for his land comprised in LRV 1166, Folio 2, situate and known as Ranch No. 33, Ankole Ranching Scheme (*hereinafter referred to as the “suit land”*).

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A judgment on admission was entered pursuant to Order 13 r.6 CPR in favour of the plaintiff for Shs. 3,262,000,000 being the amount of compensation for the value of the suit land.

The only outstanding issues were in respect of the prayer for general damages, *mesne* profits, interest, and costs of the suit. The parties canvassed evidence on these issues with Prof. Ephraim Rwabu Kamuntu (PW1) being the only witness to testify.

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Mr. Abraham Mpumwire of *M/s Bashaha & Co. Advocates* represented the plaintiff and Mr. Geoffrey Madette, a State Attorney in the Attorney General’s Chambers, represented the

defendant. Both Counsel filed written submissions which are on court record and I have taken into account in arriving at a decision in this judgment. I am also thankful to them for supplying court with copies of the authorities they relied on. The issues for determination are as follows;

1. Whether the plaintiff is entitled to award of general damages and interest thereon.

35 **2. Whether the plaintiff is entitled to award of mesne profits and is so, how much?**

3. Whether the plaintiff is entitled to the award of interest on the amount of compensation and mesne profits if any, is awarded in the latter.

4. Whether the plaintiff is entitled to the award of costs of the suit.

40 **5. Whether the case warrants the award of a certificate of complexity and certificate for two counsel.**

Resolution of the Issues:

Issue No.1: Whether the plaintiff is entitled to the award of general damages and interest thereon.

The position of the law in ***James Fredrick Nsubuga vs. Attorney General, HCCS No. 13 of 1993***, is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. In the case ***Uganda Revenue Authority vs. Wanume David Kitamirike CACA No. 43 of 2010***, the Court of Appeal also held that;

50 ***“... general damages mean compensation in money terms through a process of the law for the loss of injury sustained by the plaintiff at the instance of the defendant. intended to restore the wronged party into the position he would have been in if there had been no breach of contract.”***

Further, the Supreme Court in **Robert Coussens vs. Attorney General, SCCA No. 08 of 1999**, held that;

55 ***“The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered....”***

In **Kibimba Rice Ltd. vs. Umar Salim, SCCA No.17 of 1992**, it was also held that 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 in had she or he not suffered the wrong. Also in the case of **Takiya Kashwahiri**
60 **& A’nor v. Kajungu Denis, CACA No. 85 of 2011**, it was held 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.

In the instant case, PW1, the plaintiff, led evidence showing that during the compulsory acquisition of the suit land by the defendant; which was unlawfully done with following the due
65 process of the law, his property and livestock were wantonly destroyed. That as a result he was denied use of the same to derive income which caused him loss on the investment.

PW1 further stated that he had pledged the suit land as security in Uganda Development Bank (UDB) for a loan facility to develop the ranch as an investment. That due to the illegal actions of the defendant’s agents, he could not repay the said loan. PW1 stated that the failure to repay the
70 loan damaged his reputation in the financial sector. That he is a professor of economics and no amount could atone for loss of reputation, besides the gross financial loss and suffering he suffered.

The defendant for its part never rebutted in any way the evidence adduced by the plaintiff on the issue. If anything, counsel for the defendant conceded that the plaintiff is indeed entitled to the

75 award of general damages. At page 7 of his written submission, counsel for the defendant submitted conceding as follows;

“Having established an actionable wrong by the defendant as against the plaintiff (refer to judgment on admission), it does follow that the plaintiff is entitled to recompense for the damage, injury or loss suffered by him.”

80 Therefore, there is clearly no contest as to whether the plaintiff is entitled to the award of general damages. The question is how much and what would be the criteria for assessing the same?

The Supreme Court gave guidance on the issue. In the case of ***Robert Coussens vs. Attorney General*** (supra) it was held, inter alia, that a party claiming damages should lead evidence or give an indication of a figure of what amount of damages ought to be awarded on inquiry as the
85 quantum. See also: ***Ongom vs. Attorney General. [1979] HCB 267.***

In the case of ***Kibimba Rice Company Ltd vs. Umar Salim***, (supra) court further held that the inconvenience or loss though not specifically proved can be inferred from circumstances adduced in evidence. That courts are always guided mainly by the value of the subject matter, the general economic or social and/or other inconvenience and/or loss that the party may have been
90 put through at the instance of the opposite party, and the nature and extent of the breach or injury. See also: ***Uganda Commercial Bank vs. Kigozi [2002] 1 EA. 305.***

In the instant case there was no mention; either by counsel in their submission or the PW1 in his evidence, of the indication in figures as to what would be fair and adequate quantum of damages. Taking guidance from the ***Kibimba Rice Company Ltd vs. Umar Salim***, (supra) in light of all the
95 circumstances of this case, I would consider Shs.200, 000, 0000/= to be fair and adequate and award the same as general damages.

Issue No.2: Whether the plaintiff is entitled to award of mesne profits and if so, how much?

Section 2(m) of the Civil Procedure Act (Cap. 71) defines *mesne* profits as;

100 ***“Those profits which the person in wrongful possession of the property actually
received or might with ordinary diligence have received from it together with interest
on those profits, but shall not include profits due to improvements made by the person
in wrongful possession.”***

In the case of ***George Kasedde Mukasa vs. Emmanuel Wambedde & 4 Others HCCS No. 459
of 1998***, it was held that wrongful possession of the defendant is the very essence of a claim for
105 *mesne* profits.

PW1 led evidence showing that he is the registered proprietor of the suit land which he bought in
1982 for extensive commercial farming and livestock rearing. That on the very the land that was
illegally taken by the agents of the Government in 1990, he had made investments with the
intention of intention of furthering his commercial farming and to derive income, but that all
110 were thwarted when his farm and activities thereon were destroyed during the illegal takeover of
the land.

There is also documentary evidence of the plaintiff’s properties that were taken over which put
the value at USD.246, 152.40. *Exhibit P2*, which is a valuation report dated July, 1996 was
adduced in evidence. Counsel for the plaintiff submitted that by the time of the valuation, the
115 dollar rate was Shs.1050 per 1 US Dollar as indicated in *Exhibit P2*; as opposed to the current
Shs.3650 per 1 US Dollar; which invariably reflects a big depreciation in the money value over
the period.

PW1 further testified that he had bought 250 Boran cattle which he had imported from Kenya.

That at the time each cow cost USD 500. That he intended them for extensive beef farming, but

120 that all that was frustrated by the actions of the defendant's agents. This evidence was not rebutted in anyway. The same goes to show that the plaintiff lost colossal amount of income any diligent person would have derived from the suit land.

The defendant made admissions; and court made a finding to that effect in *HCMA No. 180 of 2016*, that the defendant's agents compulsorily acquired the suit land and distributed it to the

125 third parties. As such the plaintiff was deprived use of the same. It is also not in dispute that the defendant did not pay compensation for the suit land in accordance with the due process of the law. Under Article 26(2) (b) (i) of the Constitution, 1995, it is stipulated that no person shall be compulsorily deprived of his or her property or any interest therein unless fair and adequate compensation is paid promptly prior to taking of the property. A similar scenario arose in the
130 case of *Mwebeiha Amatos vs. The Attorney General HCCS No. 38 of 2015*, where Government unlawfully took over land intended for commercial use and settled third parties thereon. This court relying on several other decided cases and held that;

“From the legal point of view clearly articulated above, mesne profits are the profits one ought to have obtained with reasonable diligence...”

135 Since in the instant case it is an admitted fact that the defendant's agents unlawfully deprived the plaintiff use of his land and income that would have accrued therefrom since 1990 to date, it is also admitted that the defendant never paid compensation for the value of the suit land in accordance with the law, these factors forms the for award of *mesne* profits.

PW1 led unrebutted evidence that he had made reasonable investments on the land for

140 commercial farming. Certainly, the return on investments that would have been derived with

exercise of due diligence for now 26 years would be enormous. Counsel for the plaintiff proposed Shs.5,000,000,000 (Five Billion Only). I find this to be rather on a higher side. Taking into account that the plaintiff had made investments on the suit land for commercial farming, I would consider that the return on investments that would have been derived with exercise of due
145 diligence for now 26 years from commercial farming for 26 years now, reasonably to be Shs. 2,500,000,000, and I award the same as *mesne* profits.

Issue No.3: Whether the plaintiff is entitled to the award of interest on compensation and mesne profits awarded.

Section 26(2) of the Civil Procedure Act (supra) gives this court wide discretion to grant interest
150 on a decree for payment of money. More importantly, section 2(m) of the Civil Procedure Act (supra) defines *mesne* profits to include interest thereon.

In the case of ***Mwebeiha Amatos vs. The Attorney General*** (supra), the primary consideration for the award of the rate of interest at 25% per annum was the fact that the suit land that was compulsorily acquired by the Government was meant for commercial purposes. In the instant
155 case, the suit land measuring 638 hectares in 1990 was intended for used for commercial farming. All that was frustrated by agents of the defendant. Counsel for the defendant in his submissions, at page 8, conceded that the plaintiff is indeed entitled to an award with provision of interest. He only suggests the award of interest at a court rate.

In the circumstances of this case, it is only fair and proper that he the plaintiff is awarded interest
160 on at rate of 8% per annum on the amount of *mesne* profits from 1990 until payment in full, and 23% per annum on the amount of general damages from the date of this judgment till payment in full.

Issue No.4: Whether the plaintiff is entitled to award of costs of the suit and interest thereon.

Section 27(2) of the Civil Procedure Act (supra) provides that the award of costs is in the
165 discretion of court and costs of any action shall follow the event unless for good reasons court
directs otherwise. In ***Francis Butagira vs. Deborah Mukasa SCCA No.6 of 1989***, it was further
held that a successful party should not be deprived of costs except for good reasons.

The plaintiff in this case was compelled to file this suit after the defendant's agents failed and/or
ignored to follow the due process of the law to pay his due compensation. That renders this a
170 proper case for award of costs to the plaintiff, and I award him the costs.

***Issue No.5: Whether this case warrants award of a certificate of complexity and certificate of
two counsel.***

Under the 6th Schedule of the Advocates (Remuneration and taxation of costs) Regulation, Item 1
(a) (ii), a party may apply for a certificate of complexity where a higher fee is considered
175 appropriate. Also under R.41 (supra), the court has the discretion to grant a certificate for more
than one Advocate considering the amount received or paid in settlement or the relief awarded or
nature and importance or difficulty of the case. Under the same provision a certificate for two
counsel may be granted to two members of the same firm. In the case of ***Pallock House Ltd vs.
Nairobi Wholesalers Ltd. (No.2) [1972] E.A. 172***, at page 175, it was held that;

180 ***“The determination by this court whether the case is a fit one for a certificate of two
advocates must be dependent upon the appreciation by the court of the nature of the
application.”***

In view of the fact that this case involves land measuring 638 hectares, and the plaintiff seeking
compensation that has lasted; and not been paid for the last 26 years, colossal amount of Shs.
185 3,262,000,000/= is involved. The case also involved complex issues of Government compulsory
acquisition of land and resetting third parties on the same. I find that it is a case that fits within

the ambit of the holding in the *Pollock House Ltd vs. Nairobi Wholesalers Ltd. (No.2)* case as a complex matter that was quite involving and required more than one Advocate. I award a certificate of complexity and for two counsels. In summary, it is ordered as follows;

1. *The plaintiff is awarded general damages of Shs. 200,000,000=.*
2. *The amount in (1) above shall attract interest at a rate of 23% per annum from the date of this judgment till payment in full.*
3. *The plaintiff is awarded mesne profit of Shs.2,500,000,000 =.*
4. *The amount in (3) above shall attract interest at a rate of 8% per annum from 1990 till payment in full.*
5. *The plaintiff is awarded a certificate of complexity and a certificate for two counsels.*
6. *The plaintiff is awarded costs of the suit.*

BASHAIJA K. ANDREW
JUDGE
09/02/2017.

Mr. Mpumwire Abraham Darlton Counbsel for the plaintiff present.

Mr. Balinda Gerald Counsel for the Attorney General present.

Mr. Godfrey Tumwikirize Court Clerk present.

Court: Judgment read in open Court.

BASHAIJA K. ANDREW
JUDGE
09/02/2017