

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

ORIGINATING SUMMONS NO.05 OF 2020

NALONGO ESTATES LIMITED:.....PLAINTIFF

VERSUS

- 1. KAMPALA CAPITAL CITY AUTHORITY**
- 2. UGANDA NATIONAL ROADS AUTHORITY:.....DEFENDANTS**

Before: Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

This matter is brought by way of **Originating Summons under Order 37 Rules 6 and 8 of the Civil Procedure Rules S.I 71-1 and Section 98 of the Civil Procedure Rules Cap. 71** for the determination of the following questions;

- 1. Whether the process of finalizing the extension of the lease to a full term in respect of properties comprised in *LRV 4211 Folio 14 Plot 96-100, Kitante Road (Yusuf Lule road)*, and *LRV 4211 Folio 15 Plot 5 Park Lane* and issuance of a lease term in respect of property comprised *LRV 2825 Folio 1 Plot 34E-38E Jinja Road* all in favor of the plaintiff pursuant to the Memorandum of understanding, should be completed by the first defendant.**
- 2. What is the most cost effective and efficient way of ensuring the smooth implementation of the Kampala Flyover Project in co-existence with the plaintiff's rights under the Memorandum of understanding?**

Alexandra

When the matter came up for hearing on 11th January, 2021, this court took note of the fact that a consent had been entered between the parties in respect of the property comprised in **LRV 4211 Folio 15 Plot 5 Park Lane**, wherein it was agreed that extension the plaintiff's lease in respect of the same commences immediately.

As directed by court, parties filed written submissions in respect of properties comprised in **LRV 4211 Folio 14 Plot 96A-100A Kintante Road (Yusuf Lule Road)** and **LRV 2825 Folio 1 Plot 34E-38E Jinja Road**.

Arguments by the plaintiff:

The originating summons is supported by the affidavit of Ms. Sarah Kizito, the managing director of the plaintiff company.

She depones that the plaintiff company has been the sitting occupant/lessee of the properties comprised in **LRV 4211 Folio 14 Plot 96-100, Kitante Road (Yusuf Lule road)**, **LRV 4211 Folio 15 Plot 5 Park Lane** and **LRV 2825 Folio 1 Plot 34E-38E Jinja Road** (hereinafter referred to as the "suit property") for the last fourteen years.

That on 19th March, 2020, the plaintiff and the 1st defendant executed a memorandum of understanding to enable the implementation of the Kampala Flyover Project since part of the suit property was to be affected by the said project.

That the MOU, (details terms of which are availed on court record), recognized that the 1st defendant had approved the plaintiff's application for the renewal of leases in respect of the suit property.

Further, that despite the plaintiff performing its obligations as per the MOU, the defendants have jointly and severally interfered with the plaintiff's use and enjoyment of its land in a manner which is arbitrary and uncoordinated.

It was further deponed that although pursuant to *clause 14* of the MOU the 2nd defendant was to give the plaintiff at least 8 months written notice of any planned demolitions during the implementation of the government projects and at least 6 months' notice of any reasonably required access after the implementation of the said projects, the 2nd defendant's officers descended on the suit properties on 23rd November, 2020 and planted mark stones covering an area of sixty decimals on the suit property in a bid to map out the route for the flyover.

That the council made recommendations for the leasing of the suit property and that the structures built by the plaintiff should be recognized as legal structures constructed based on the approval plans, but which recommendations the 1st defendant failed and/or refused to implement.



The plaintiff company further claims that during the fact finding mission by the 1st defendant's council, it was observed that the plaintiff had approved building plans for the structures erected on **Plot 5 Park Lane, Plot 96A-100A Yusuf Lule Road and Plot 34E-38E Jinja Road.**

Furthermore, that the plaintiff is not opposed to the Government project of the Kampala Flyover as it has fully co-operated with the stakeholders and is seeking court's intervention in order to facilitate the smooth implementation of the project but it is the 2nd defendant's acts that are jeopardizing the said implementation of the project, and that the current legal proceedings have been forced on the plaintiff by the non-observance of the terms of the MOU.

The plaintiff's claim in *paragraph 11* of the OS is that its business and that of its tenants have been adversely affected and disrupted by the defendants; that they now live in constant fear of destruction of their properties and eviction and yet the Kampala Flyover Project and the plaintiffs' businesses are supposed to co-exist under the MOU.

The plaintiff company in rejoinder also denied the claim that it had failed to do what was ordered in the Arbitration court and denies that it continues to maintain unauthorized structures on the suit land.

The OS was therefore intended to determine the proper construction of the provisions of the MOU and the rights of the parties as well as to determine the most cost effective and efficient way of ensuring a smooth and expeditious implementation of the Kampala Flyover Project, vis a vis the rights of the plaintiff in the suit properties.

Accordingly the process of finalizing the extension of the lease to a full term in respect of properties comprised in **LRV 4211 Folio 14 Plot 96-100, Kitante Road (Yusuf Lule road), and LRV 4211 Folio 15 Plot 5 Park Lane** and issuance of a lease term in respect of property comprised **LRV 2825 Folio 1 Plot 34E-38E Jinja Road** in favor of the plaintiff pursuant to the Memorandum of understanding (MOU) be completed by the 1st defendant.

Arguments by the 1st defendant:

The affidavit in reply of the 1st defendant is deposed by Mr. Emmy Waligo, an advocate of the High Court and the Manager Land Management Unit of the 1st defendant, the registered proprietor of the three suit properties. The details of the arguments raised by him are laid out in that affidavit.

He contends that there was no actual dispute existing between the parties as to construction; and that if any existed under the MOU the same it is to be resolved mutually between the parties.

The 1st defendant denied any interference with the plaintiff's use and occupation of the suit land, denied any responsibility for any acts attributed to the 2nd defendant, claiming that it

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remains committed to the grant of the leases upon completion of the survey process to delineate land required for government projects.

Accordingly, that the Originating summons and questions therein were premature and therefore prayed for dismissal of the suit, with costs to the 1st defendant.

Arguments by the 2nd defendant:

The 2nd defendant, is a Government Agency charged with the mandate of constructing and maintaining the national road network for purposes of compulsorily acquiring tracts of land affected by the respective road projects.

In the affidavit in reply filed by Ms Juliette Oyella Okwi, the Manager Land Valuation under the Directorate of Roads & Bridges Development, the claim was that the application against it was misconceived since it was not a party to the MOU and cannot be sued.

In submissions thereof, the point of contention as raised by the 2nd defendant was whether in the first place the MOU was specific on the acreage of the land to be utilised by the Government projects; and secondly, whether a proper interpretation of the MOU provides that the extension and/or grant of the leases to the plaintiff by the 1st defendant ought to be effected inclusive of the land required for the projects.

That the process of acquiring land involved land survey to identify properties and property owners assessment and valuation of the properties and payment of compensation as well as payment of compensation to property affected persons.

Counsel further contended that it was wrong for the plaintiff to ask court to read into the MOU provisions that were not intended to be included. That would amount to judicial interference. To support that position, he cited ***Simon Tendo Kabenge T/A M/S Simon Tendo Kabenge advocates vs Mineral Access Systems (U) Ltd HCCS No. 275 of 2011.***

By way to a quick response to that however, this court has a wide discretion to deal with all matters presented before it, including interpretation of documents where the intention is to give a correct meaning to any specific provision of a document properly laid before it.

On that point I would rely on the same authority graciously availed by the 2nd defendant: ***Agri Industrial Management Agency Ltd vs Kayonza rorer Tea Factory Ltd and Anor HCCS No. 819 of 2004.***

In constructing contractual provisions, the object of court is simply to give effect to what the parties intended. A court would not therefore set out to deliberately interfere with the intention and objectives of the instrument freely negotiated and would only intervene when called upon to do so, as indeed did happen in this case.



But even more importantly, the parties in this case had been availed the chance to work out a settlement, but only succeeded in part. The rest of the issues raised shall be considered under the questions to be addressed under the two issues raised in this OS.

Issue No. 1: Whether the process of finalizing the extension of the lease to a full term in respect of the properties comprised in LRV 4211 Folio 14 Plot 96A-100A Kintante Road and LRV 2825 Folio 1 plot 34E-38E Jinja road, in favor of the plaintiff pursuant to the Memorandum of Understanding should be completed by the 1st defendant.

By virtue of **section 101 (1) of Evidence Act, Cap. 6**, whoever desires court to give judgment to any legal right or liability depending on the existence of any facts he/she asserts must prove that those facts exist. (**George William Kakoma v Attorney General [2010] HCB 1 at page 78**).

The burden of proof lies therefore with the plaintiff who has the duty to furnish evidence whose level of probity is such that a reasonable man, might hold more probable the conclusion which the plaintiff contend, on a balance of probabilities. (**Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004**).

In the instant case, it is not in dispute that the plaintiff company entered into lease agreements on various dates with the 1st defendant, in respect of land comprised in :

- a. LRV 4211 Folio 14 Plot 96A-100A, Kitante Road (Yusuf Lule road), Kampala with the user as Private Recreation Facility;**
- b. LRV 4211 Folio 15 Plot 5 Park Lane Kampala with the user as Private Recreation Facility; and**
- c. LRV 2825 Folio 1 Plot 34E-38E Jinja Road (Centenary Park), with the user as Public Open Space.**

It was also not in contention that the plaintiff and the 1st defendant signed an MOU in respect of the suit properties on 19th March, 2020 in confirmation of the directives of the President. The parties also duly acknowledged the mandate of the 1st defendant to administer Kampala City on behalf of the central Government.

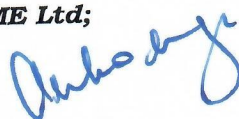
Upon expiry of the sub-leases and leases created over the suit property, property reverted to the 1st defendant. On 17th May, 2017 the 1st defendant council recommended renewal of the respective leases. However, the 1st defendant has since not taken up the matter.

I have had a carefully perusal and consideration of the pleadings and submissions made by each side, the details of which I need not repeat here.



Is trite law that facts which are admitted need not be proved. The following were among the facts which were not in dispute:

- a. *The plaintiff company has been the sitting occupant/lessee of the above suit properties, for the last fourteen years;*
- b. *By virtue of a written management agreement dated 16th May, 2006, the plaintiff was granted a right to develop, manage, control and maintain LRV 285 Folio 1 Plot 34E-38E Jinja Road, Kampala (Centenary Park) and transform it into a modern recreational park for a term of 10 years, sub-leased to the plaintiff FRV 922 Folio 18 (Formerly LRV 4211 Folio 14 plot 96A-100A Kitante road) Kampala as well as FRV 992 Folio 17 (formerly LRV 4211 Folio 15, Plot 5 Park Lane Kampala), for a term of 5 years commencing 18th April 2011.*
- c. *Upon expiry of the initial term of the subleases on LRV 4211 Folio 14 Plot 96A-100A, Kitante Road (Yusuf Lule road), Kampala and LRV 4211 Folio 15 Plot 5 Park Lane Kampala the plaintiff applied for the renewal of the subleases on those properties and a lease for LRV 2825 Folio 1 Plot 34E-38E Jinja Road (Centenary Park);*
- d. *The defendants did not deny the plaintiff's claim that it had duly performed all the lease covenants before the expiry of the initial lease term of years and that it had applied for a full term lease of 49 years.*
- e. *The approvals were made by the 1st defendant at its meeting held on 17th May, 2017 under Minute No. 5/47.3/17 (Annexure 'B':Minutes of KCCA). The decision of the council was to the effect that the plaintiff company allows the national development projects to be executed at the Centenary Park in accordance with the law; that leases for the company on plot 5 park lane and plot 96A to 100A Yusuf Lule road be extended to full term leases; and Nalongo Estates be leased plot 34E to 38E. That resolution however was never executed.*
- f. *The land in question was identified by the 2nd defendant as land to be affected by 3 government projects to wit; the Kampala Flyover project implemented by UNRA, the lake Victoria Protection II construction and operation of Nakivubo Waste Water treatment Plant implemented by NWSC and Electricity Substation by UMEME Ltd;*



g. It was also crucial term of the MOU of 19th March, 2020 as well as in the council's resolution of 17th May, 2017, to take the Government projects as the priority and observe their implementation without any impediments since the rights of the plaintiff could co-exist with the said projects/programmes;

h. Following the discordant relations between the parties a meeting was convened and presided over by H.E the President on 7th July, 2017 which was aimed at exploring amicable resolution of the dispute.

Subsequently an MOU was signed between the plaintiff and the 1st defendant with clearance of the Attorney General. The parties under the MOU intended to resolve the issue of ownership of the suit properties in light of the pending government project of the Flyover project.

Counsel for the plaintiff argued that the MOU in the instant case was in a nature of a contract and did not give room for negotiations as the defendants seems to suggest.

In his submission, counsel for the 1st defendant also conceded that it was not in contention that the parties entered into an agreement by signing an MOU; that the parties had the capacity to enter into the said arrangement; and that indeed they had an intention to be legally bound.

He however contended that the drafting of the MOU was pursuant to presidential directives. That the President being the Fountain of Honour, his directives overrode any previous arrangements that existed between the parties.

The directives conclusively gave the road map that would ensure smooth implementation of the project, and acknowledged that the Government projects must take priority which meant therefore that the plaintiff was only to be leased the residue after curving off the land needed for the projects. According to learned counsel, it was contrary to the spirit of the MOU for the plaintiff to claim immediate rights arising therefrom.

Given that background, it has long been a settled principle that an agreement made with the free consent of the parties with the capacity to contract, the said parties to the agreement are bound by its terms. (**Kyarimpa Sarah vs Harriet Nassozi Hewett HCCS No.794 of 2016**).

According to **Black's law Dictionary, Sixth Edition**, a memorandum of understanding is defined as an informal record, note or instrument embodying something that the parties desire to fix in memory by the aid of written evidence, or that is to serve as the basis of a future or formal contract or deed.



A MOU may take different forms. It can be binding, non-binding or partly binding and partly non-binding, all depending on the intention of the parties and the exact wording of the memorandum of understanding.

For a contract to come into existence on basis of a memorandum of understanding, there must be an intention to do so. (**see: vol.1 Chitty on Contracts, at 198 (H.G. Beale ed., 29th Ed. 2004; and Balfour v. Balfour [1919] 2 K.B. 571 at 579).**

The test is an objective one, for if a reasonable person would consider that there was an intention so to contract, then the promisor will be bound (**see Ermogenous v. Greek Orthodox Community of SA Inc [2002] HCA 8, 209 CLR 95 at [25].**

The parties manifestation of intent is a question of fact, to be answered by looking at the totality of the circumstances as each case is to be determined on its facts. These circumstances can include the type of agreement, the completeness and specificity of the terms, the nature of the parties' relationship, as well as more general consideration of the parties' reasonable background beliefs.

In order to be enforceable, a memorandum of understanding must reflect the parties' agreement on all material terms, leaving none of them for future consideration. All terms must be identified with such certainty and definiteness that the court can clearly ascertain the precise act which is to be done.

The enforceability and binding nature of a memorandum of understanding depends largely upon the content, nature of agreement, language and intention of the parties to it. In cases where the memorandum of understanding is in the nature of a contract and fulfils its essentials, it is held to be enforceable (**see Weddington Productions, Inc. v. Flick (1998) 60 Cal.App.4th 793).**

An agreement will usually fall into this category if it is clear that the parties intended it to be binding and the terms are clear and certain enough so as to be legally enforceable. There is also a longstanding maxim of equity that "*equity looks at the substance rather than form*".

In the same vein, if the agreement is described as an MOU but in substance and from all indications is an enforceable contract, the courts will enforce the apparent memorandum of understanding as a contract with its attendant legal consequences.

The terms of the agreement will be assessed objectively, and intention will be assessed by the content, not the title or label of the document. A valid and enforceable contract requires a meeting of the minds between the parties with regard to all essential and material terms of the agreement.

I could not agree more therefore. Where a memorandum of understanding satisfies all the essential element that make a valid contract under the Contract Act, it will be enforced in the



same way as any other contract, especially where a strong presumption exists, as in this case, that the parties intended to create legally binding contract. The same thing may not be said about an executive directive.

Where there is a clear divergence between the two, the weight in legal terms cannot be the same. In short therefore, the said directives which in my view would be best described as recommendations had been reduced into a contract, endorsed by the two parties.

The recommendations therefore formed the basis of the MOU binding to both parties. Had the parties expected anything different, nothing could have prevented them from presenting a different document, all subject to Government policy.

Having admitted that the parties willingly entered into the arrangement, it therefore becomes difficult to believe that anything else other than what is contained under the MOU had been intended. The role of this court therefore becomes restricted to reading, and interpreting the meaning and intention behind the terms, in case of any disagreement.

The 1st defendant did not present any evidence to prove that MOU had been endorsed outside the exercise of a free will of either or both sides. The 2nd defendant in that regard was therefore estopped from disclaiming the actual objectives for which both that meeting and the MOU had been intended. The 1st defendant could not also therefore be seen to raise matters of concern at this stage, which could well have been raised at the material time when negotiations were ongoing.

It could not question its own mandate four years after the council resolution was made to grant the extension of the leases when in actual fact it was already in the process of implementing an extension for one of the plots.

Under **Section 24 of the Public Procurement and Disposal of Assets Act, 2013** KCCA is among the procuring and disposal entities as listed in that law. As part of the 2nd defendant, its decisions are made on behalf of that entity, and therefore legal and binding.

The issue of disposal by the council was, as a matter of fact considered and resolved in **Nalongo Estates Ltd v Kampala City Council Authority CAD-ARB-No. 27 of 2012**, wherein the court observed that the mayor together with the council had the mandate to pass lawful decisions on behalf of the authority to be implemented by the executive director.

The 2nd defendant having been a party under that dispute was fully aware of that position, and cannot be allowed to raise it yet again under another action. This was a position that had neither been challenged nor discharged.

Thus **Clause 3** of the MOU states as follows:

"The first party shall immediately grant to the second party, and in doing so effect the registration of the extension of the sub lease over land Plot 96A-100A

Kitante (Yusuf Lule Road) (formerly comprised in LRV 4211 Folio 14) for purposes of enabling the second party to replace the affected building and other developments which will be demolished to pave way for the flyover.”

The above term of the MOU is clear and unambiguous and remained unchallenged. Since therefore the plaintiff's rights are pegged onto the government project which is considered a priority, the term *immediate* should be applied bearing that fact in mind that calls for urgency.

The lease extension cannot remain in abeyance if there is a pending government project on the land which is a subject of the lease. It would defeat the whole purpose for which the MOU was intended. The delay to grant registration of the lease would inevitably therefore delay the implementation of the entire Government program.

Since it is clear that the parties intended to recognise and implement the 1st defendant's obligation to extend the plaintiff's leases in respect of the suit properties it was therefore only prudent that the same is put into immediate effect, bearing in mind the 2nd defendant's tasks ahead.

In light of the above clause, the assertion therefore by the 1st defendant that the plaintiff's claims for immediate rights from the MOU were contrary to the spirit of the MOU had no backing, and could not therefore have been far from the truth.

The plaintiff was and still is in physical possession of the suit property, having made developments on that land and currently carrying out businesses, relying heavily on the MOU and a commitment made by the 1st defendant as early as 2017 that the leases claimed were to be extended.

The fear of eviction in those circumstances would therefore be justified since the plaintiff is in occupation albeit under expired leases. In the premises, considering the fact that the programmes are meant to take place as priority, there would be no proper excuse to give court as to why after having had to wait for years, the 1st defendant still needed time to execute its council's decision to grant an extended lease.

Besides also is the fact that the plaintiff would be required to immediately vacate from the areas affected, before demolition is to take place.

In response to ***issue No. 1*** therefore:

- 1. The 1st defendant is under obligation to grant extension of the full term leases to facilitate a smooth implementation of the Kampala Flyover Project.***
- 2. The process of finalizing the extension of the lease to a full term in respect of the properties comprised in LRV 4211, Folio 14 Plot 96A-100A Kintante Road and LRV 2825 Folio 1 plot 34E-38E Jinja road, should be immediate, and must***

be completed by the 1st defendant pursuant to the Memorandum of Understanding.

Issue No. 2: What is the most cost effective and efficient way of ensuring the smooth implementation of the Kampala Flyover Project in co-existence with the plaintiff's rights under the Memorandum of understanding?

A response to this question rotates around the execution of the MOU, and the interpretation to be attached to the relevant clauses of that agreement.

With all due respect to the 1st defendant's contention, it would not have been possible for the parties under the MOU to have reasonably foreseen all that was necessary for the execution of the tasks and include them all under the MOU. Even if that had been possible, not all terms could have found their way into the MOU. That is where court comes in.

To counsel for the 2nd defendant, a proper interpretation of the MOU would mean that the acreage to be alienated for use by the Kampala Flyover Project would be that determined by the implementing agency under *clause 7* of the MOU.; that the extension and/or grant of the leases to the plaintiff by the 1st defendant ought to be effected inclusive of the land required for the projects.

Since however as pointed out earlier the 2nd defendant was not party to the MOU, its interests were basically focussed on implementing the Government program; identifying the area and size for the project and compensation of the plaintiff for demolished property and acquired land as stated clearly under *clause 4*.

The 2nd defendant pointed out, correctly so, that the process of acquiring land would involve a survey to identify properties and property owners, assessment and valuation of the properties and payment of compensation as well as payment of compensation to property affected persons. That assertion was not challenged.

It is for that reason therefore that it had carried out the field surveys and data capture for the Kampala Flyover road project, identifying **plots 96A-100A and Plot 34E-38E** as the plots to be affected by the project, and which by that time had reverted to the 1st defendant, after expiry of the plaintiff's leases.

It must be pointed out however that **article 26 of the Constitution** clearly recognises every person's right to own property, either individually or in association with others. Under **article 26 (2)** thereof, no person is to be compulsorily deprived of property or any interest in or right over property of any description, except where the taking of possession or acquisition is necessary for public use, (among others); and the compulsory taking of possession or acquisition is made for prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.



The current law governing the process of compulsory acquisition is the **Land Acquisition Act, Cap. 226**, under which a person having an interest in relation to any land must be compensated. A *person having an interest* is defined to include a person claiming an interest in compensation payable in respect of the land. (**section 1(f)**). Going by that definition, a person who has unregistered interest in the land or one who is in occupation of the land is entitled to compensation.

In **section 2 (1) of the Land Acquisition Act**, only a person authorised by the Minister may enter upon the land, survey the land and do any other thing to ascertain the suitability of the land. Under **section 2(2)** thereof the person who suffers damage as a result of the exercise of the powers under **section 2(1)** is guaranteed of compensation by Government.

The 2nd defendant in this matter did not deny the fact that it entered onto the suit property and placed mark posts on the land reflecting the area required for the project. That after finalizing the feasibility design, it was established that the total land acreage required for the project was 5.23 acres, with **plot 96A-100A** being affected by 0.53 acres leaving a residue of 1.67 acres; and **Plot 34E-38E** affected by 4.7 acres leaving no residue, assertions which the plaintiff however rejected.

The above actions and findings while absolutely necessary for the commencement of project fell short of engaging the plaintiff company as the sitting tenant. The procedure as outlined in that Act therefore had to be followed to the letter, bearing in mind the provisions of **article 26 of the Constitution** which guarantees a person's right to property. It therefore goes without saying that the 2nd defendant need not have been party to the MOU to implement the highlighted provisions of **the Land Acquisition Act.**

Whereas therefore at the time of the feasibility design, the lease on **plot 96A-100A** and the management contract for **plot 34E-38E** had expired and the property reverted to the 1st defendant, the plaintiff's full rights as an equitable owner on the suit land remained protectable by virtue of the said Act for the land and structure on that land, the size and value of which had to be ascertained prior to effecting payment in compensation.

This court also notes that the management contract between the plaintiff and the 2nd defendant had been amended after issues arose with another developer in the neighborhood and by virtue of an MOU between the plaintiff, the 1st defendant and a third party, the acreage under the claimant's management had been reduced from 5.32 hectares to 3.130 hectares.

Conclusion by court:

In the premises, and in response to the second issue under this OS, to achieve the most cost effective and efficient way of ensuring the smooth implementation of the Kampala Flyover Project in co-existence with the plaintiff's rights under the MOU, the following are to guide the process::



1. *Since the acreage required for the Government projects was never specified in the MOU it placed the obligation to determine the acreage required for the project on the implementing agencies, as per clause 7. The clause requires the implementing agencies to wit: UNRA and UMEME Ltd to determine the necessary space required for the projects.*
2. *A survey shall accordingly be conducted within a period of two weeks from the date of delivery of this decision.*
3. *The purpose of the survey would be to identify the part of the suit land to be acquired for the Kampala Flyover project.*
4. *The surveyor(s) (to be agreed upon between the parties) shall curve off the area identified for the Kampala Flyover and the residue to be left for the plaintiff.*
5. *The survey exercise shall be conducted in the presence of the parties and/or their representatives and the neighbouring developers or their duly authorised representatives.*
6. *As per Clause 8, upon implementation of the project, the 1st defendant is to hand over to the plaintiff the residue for the certificates of title for plot 34E-38E Jinja road, Kampala (comprised in LRV 2825 Folio 1 Jinja Road Kampala) (Centenary Park) in respect of which a fresh lease is to issue, excluding roads and channel reserves, with the user as public open space and upon such lease conditions as shall be agreed upon.*
7. *As per clause 6, it is a mandatory requirement for the plaintiff company to temporarily continue in occupation of Plot 34E-38E with the user as public open space until the implementation of the government projects.*
8. *The plaintiff shall get an immediate extension on FRV 992 Folio 17 (formerly LRV 4211 Folio 15, Plot 5 Park Lane Kampala), the property that is not affected by the project.*
9. *A lease agreement shall be entered between the 1st defendant and the plaintiff and a certificate of title covering the residue for LRV 4211, Folio 14 Plot 96A-100A, Kintante Road (area to be determined under the survey) and issued to the plaintiff company by the 1st defendant for a full term lease.*



10. *For the avoidance of doubt, the renewal and extension of the leases to the plaintiff for the affected plots shall be contingent upon the implementing agencies determining the necessary space required for the project.*
11. *The 2nd defendant is to hand over to the plaintiff certificate of title for the suit land for the residue within a period of two weeks after the survey report is filed in court, and before commencement of the implementation of the Government project.*
12. *The project shall be embarked on after the plaintiff has received fair and adequate compensation from the 2nd defendant for the areas affected by the project.*
13. *Upon receiving compensation for the land and buildings within the area affected by the project, pursuant to clause 14 of the MOU, the 2nd defendant shall be required to give the plaintiff written notice of any planned demolition on any part of the suit land.*
14. *The plaintiff shall thereafter vacate any and all portions of land identified as required for the implementation of the project, within the time as may be agreed upon between the plaintiff and the 2nd defendant.*
15. *A copy of the survey report shall be availed to each party and to court within seven days after completing the survey.*

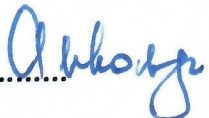
Compensation

- 1) *For avoidance of doubt relevant procedures as spelt out under the Land Acquisition Act for the compulsory acquisition of land shall be applicable, with necessary modifications by parties.*
- 2) *Clause 4 of the MOU is clear and unambiguous. The 1st defendant has the obligation to cause the 2nd defendant as the implementing agency for the Kampala Flyover to pay all compensation due to the plaintiff for the value of the land and developments likely to be affected by the projects.*
- 3) *The value of the lands, buildings and other developments made on the land by the plaintiff which are likely to be affected by the project shall be determined by the Chief Government Valuer, and the exercise shall be conducted about the same time when the survey is being carried out.*



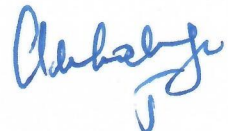
- 4) *The Chief Government Valuer shall file a valuation report in court within seven days after the exercise of valuation has been conducted; and serve each party with a copy.*
- 5) *In case of any planned development or structure by the plaintiff after the land has been curved off for the Government project, the plaintiff shall (if not already done), present its plans for approval by the 1st defendant.*
- 6) *As per its undertaking under clause 9 of the MOU, the plaintiff is not to interfere with the works and activities on the land affected by the project, the plaintiff having consented to allowing such works, the planning and preparatory activities, including the determination of the acreage needed for the flyover project.*
- 7) *The cost of valuation and survey shall be met by the 2nd defendant, except where each party may wish to engage private valuers/surveyors to oversee the processes, in which case the parties shall meet their respective costs of those services.*
- 8) *Each party shall meet bear its own costs in this matter.*

I so order.

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Alexandra Nkonge Rugadya

Judge

*Delivered by email
16/6/2021* 

4th June, 2021