

naTHE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

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CIVIL SUIT NO. 128 OF 2016

EPAFURA BYOLEKO (*represented by his*

personal representative: Edward Kanyarusoke).....**PLAINTIFF**

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VERSUS

1. KAMPALA CITY COUNCIL AUTHORITY

2. ATTORNEY GENERAL (*struck of the record by consent of all parties*)

3. KIGOZI RICHARD.....**DEFENDANTS**

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Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT:

Introduction:

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The plaintiff is the registered proprietor of land comprised in **Kibuga Block 38 Plot 20 land at Makerere** (*suit land*). Upon his demise, court appointed his son Mr. Edward Kanyarusoke as his legal representative to complete this suit.

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He filed this suit against the defendants, seeking a declaration: *that the 1st and 3rd defendants are trespassers on his land; a declaration that the 1st defendant compulsory acquired the suit land without compensating the plaintiff; an order compelling the 1st defendant to remove the drainage channel created in the suit land; a permanent injunction restraining the defendants from further trespassing on the suit land; compensation from the defendants for the value of the land illegally acquired general damages; and costs of the suit.*



It was the plaintiff's claim that at the time he took over possession of the suit land it was comprised in one piece and was not divided by any drainage channel, neither did it have a road cutting through.

The 1st defendant (KCCA) without any color of right or obtaining or compensating the plaintiff, diverted a drainage channel which formerly used to flow between the neighbouring **plots 29 and 21** as per the deed prints to the certificate of title to instead flow through the plaintiff's **plot 20**, thus causing a drainage channel to be illegally created unto the plaintiff's land.

The plaintiff also claimed that the 3rd defendant, Mr. Kigozi Richard took advantage of the situation and on 25th December 2014, without the plaintiff's prior consent, poured murram soil on one side of the land and created an illegal access road thereon.

That the drainage was poorly maintained by the 1st defendant and carries foul smelling solid and liquid waste/sewage which has continued to destroy the plaintiff's land and pose a serious health hazard to the occupants.

The 1st and 3rd defendants filed WSD denying the claims.

Issues arising for determination by court.

At the conferencing, the following issues were framed for determination.

- 1) ***Whether the plaintiff's suit discloses a cause of action against the defendants;***
- 2) ***Whether the 1st and 3rd defendants trespassed on the plaintiff's land;***
- 3) ***Whether the 1st defendant compulsorily acquired the plaintiff's land and if so, whether the acquisition was lawful;***
- 4) ***Whether the plaintiff is entitled to the reliefs sought?***

Resolution of the issues:

Auto Garage Vs Motokov (1971) E.A 519 gives the following three essential elements: that the plaintiff enjoyed a right; the right was violated and that the defendant was liable. A cause of action is established where pleadings disclose that there is a right, a right is violated and that the defendant is liable. A reasonable cause of action is one which in light of the pleadings has some chance of success. (***H.C.M.A No. 111 of 2013: Harriet Fowler & Anor vs Arthur Busingye***).



The plaintiff presented a certificate of title (**PEXh1**), which shows him as the registered owner of **plot 20**. His name was entered onto the title on the 9th August, 1996. He claimed that his right to quiet enjoyment and occupation of the suit land as a registered proprietor had been violated by the defendants who created an illegal drainage and access road through his land and without his permission.

Furthermore, that the KCCA diverted the drainage channel from its original place, a few blocks away and made it flow through his land thus creating a drainage channel which cut the suit land into two pieces.

That the 3rd defendant taking advantage of KCCA's actions started using one portion of the suit land as an access road and that KCCA has since continued to preserve the drainage channel over the suit land without compensating the plaintiff.

That correspondences from KCCA to the plaintiff clearly indicated that the drainage channel and the access road created on his land were not gazetted and as such illegal and amounting to trespass.

Since he was neither consulted nor compensated by KCCA, such actions amounted to compulsory acquisition of his land, which claims were however refuted by KCCA and the 3rd defendant in their respective WSDs.

The subject matter of the dispute as I understand it therefore rotates around two main questions which, applying my discretion under **Order 15 rule 5 of the Civil Procedure Rules**, I shall amend as follows:

1. Whether the 1st defendant (KCCA) compulsorily acquired the plaintiff's land and if so, whether the acquisition was lawful?

2. Whether or not the 3rd defendant created an access road without the consent and knowledge of the plaintiff.

Issue No. 1: Whether the 1st defendant (KCCA) compulsorily acquired the plaintiff's land and if so, whether the acquisition was lawful?

The plaintiff alleged that the defendants' actions of creating an access road and an open drainage channel over **plot 20** (suit land) neither of which had been gazetted amounted to trespass on the land and compulsory acquisition of his property by KCCA, without compensation.

Counsel cited **H.C.C.S No. 118 of 2012, Tayebwa Geoffrey and Anor Vs Kagimu Ngudde Mustafa; Justine E.M.N. Lutaaya Vs Sterling Civil Engineering Co, SCCA No. 11 of 2002**



In his cross examination he informed court that according to the deed print there was no drainage channel or road cutting through **plot 20** (the suit land).

During the *locus* visit he showed court where according to the deed print the access road and drainage channel should be flowing, and that was between **plots 21 and 29** , but not **plot 20** which is owned by the plaintiff.

Counsel for the plaintiff referred to correspondences made between KCCA and the plaintiff (**PExh 9 and PExh 10** in which KCCA had written to the plaintiff confirming that there existed a drainage and a road on **plot 20** (the suit land) which had not been gazetted.

He dismissed the argument by the defendants that the access road through the suit land was created to serve Makerere University students to access Mulago Hospital as false and untenable, thus making the defendants mere trespassers on the suit land.

From the evidence on record the plaintiff claimed to have proved on a balance of probabilities that the drainage channel and the access road never used to pass through the suit land but were rather illegally created by the defendants without the prior consent and/or compensation of the plaintiff, which amounted to compulsory acquisition of his land.

The law:

Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person.

Section 103 further stipulates that:

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence."

Article 26(2)(b) of the 1995 Constitution of the Republic of Uganda, stipulates that no person is to be deprived of property or any interest in or right over property unless the person is promptly and adequately compensated prior to the taking of possession or acquisition of the property.

Section 2 of the Land Acquisition Act, Cap.226, gives power to a person authorized by the Minister to enter upon the land; survey the land; dig or bore into the subsoil and remove samples; and do any other thing necessary for ascertaining its suitability.

By virtue of **subsection (2)** thereof, Government is required to pay compensation to any person who suffers damage as a result of the exercise of the powers conferred by the Act. **Section 3 (1)**



is clear indication that when land is required for public purpose the Minister must make a declaration to that effect by statutory instrument. It is then that the land is marked out and measured; and a plan of the land to be acquired is made, if not already made. **(section 4).**

5 Under **section 5**, a notice in the gazette must be given to all concerned parties not later than 30 days after the publication in the gazette, requiring them to appear and state their objections among others, to the plan.

KCCA in its defence while denying that it had compulsorily acquired the plaintiff's land, contended that the Nkinzi road alleged to be trespassing on the plaintiff's land had existed as far back as the year 1996 as an easement providing access to the neighboring plots.

10 KCCA also denied having diverted the drainage channel as alleged by the plaintiff from its original place to the suit land since the same had existed even before the plaintiff became the registered owner of the suit land, contending that the plaintiff acquired title over the suit land, while fully aware of the existence of the road and drainage channel.

15 KCCA relying on the statement by **Pw2** that the access road had been created by the 3rd defendant, maintained that the statement had exonerated it from liability.

It was also noted by this court that the certificate of title was obtained by the plaintiff on 9th August, 1996. The first complaint appearing on record to have been raised by him concerning this matter was addressed to KCCA, dated 15th August, 2001 and titled: *Changed Drainage System*.

20 In that letter, the plaintiff requested KCCA to construct a proper drainage to stop water from stagnating on his land. **(PExh 2)**, the letter was addressed to the City Engineer, Kawempe Division and copied to other departments within the Authority.

It was written by counsel representing the plaintiff at the time: **M/s Tumusiime, Kabega & Co. Advocates.**

25 It states:

Sometime back, you without his knowledge and consent changed the drainage system in the area from its planned position to a new one passing under and/or near his land and buildings. This was because someone in the neighborhood put up a storied house across the original drainage system! (emphasis mine).

30 *As a result of the above changes, running water has extensively damaged our client's house and garage. The house and perimeter wall are on the verge of collapse. His (plaintiff's)*

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concerns have been brought to your attention a number of occasions but no positive steps have been taken.. Our client at one time requested you to construct a proper drainage to stop the water from stagnating on his land but you refused.

Our instructions are to demand as we hereby do, that you immediately construct a proper drainage system to prevent water from damaging our client's land....(emphasis added).

PEXh 4, is another letter dated 14th of June, 2003, addressed to KCC. It referred to some time back in 1994 when the former KCC Engineering department of Kawempe Division *divided the land into two parts* by changing the drainage system from its original plan and digging into his plot.

- 10 That when the plaintiff protested, the agents of KCC decided to leave the sewage/drainage open to drop all the waste in that plot, without due consideration of the health hazards it entailed, let alone denying him the right to use the plot to full effect.

Furthermore that the Town Clerk made a verbal commitment to cover up the channel once funds were available, which commitment apparently he never fulfilled.

- 15 On 28th January, 2006 some three years later, the plaintiff E. M Byoleko, wrote again, this time as director of *B.K Motor Garage*. (**Refer to PEXh 3**) to the Town Clerk Kawempe Division, with a copy to the City Engineer.

His complaint again was that his plot had been divided into two portions. He reminded the Town Clerk of the several times he had written to the institution and their failure to act on his request.

- 20 He made another request to him to have the drainage channel repaired, back to its original position so that he could enlarge the garage business.

A response was made dated 27th March, 2014 by Eng. Justus Akankwasa, Deputy Director Buildings and Drainage to yet another one by the plaintiff dated 10th March, 2014. The first step therefore towards corrective action by KCCA therefore came after 13 years, following constant reminders by the plaintiff. KCCA in its reply indicated to the plaintiff that a site visit had been made. (**Refer: PEXh 9**).

KCCA committed itself to open up boundaries of the **plot 20** and neighboring properties and guide on the access road and proposed that after obtaining guidance from the Physical Planning Directorate they would be able to handle the request for a closed drain on the suit land.

- 30 **PEXh 10** is the subsequent correspondence to the plaintiff, dated 7th May, 2014. Eng. Justus Akankwasa, wrote to say that based on the guidance of Physical Planning Department it was

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noted that there was an existing drainage channel that passes through **plot 20** and on the side there is an access road that connects to the behind plots.

That both the drainage channel and access road were on the suit land and that though the access road was not gazetted, it had been created to serve the neighboring plots. Based on the above guidance as well as the observed dire state of the drainage channel as admitted by KCCA, the plaintiff was requested to provide engineering drawings showing the proposed plan for a closed drain at this location.

That it was only after review and approval of the above design that repair/construction works on this section were to be allowed to commence. It is not known if the drawings were made by the plaintiff since court found no reply to that letter.

What is on record however is the fact that on 2nd October, 2015 the plaintiff through his counsel took the decision to file both a notice to sue and a statutory notice to sue. (**PExh 5 and PExh 6**).

On 8th April, 2014 a survey (**PExh 8**) was conducted by **Cw1**, Humphrey Mitanda a Consultant Land surveyor with *M/s Synergy Surveys & Associates*. The report noted that a water drainage channel of three metres wide passes through the plot and hence making approximately 0.005 acres (**PExh 8**). He also informed court that the drainage is a natural stream that had been developed through the land.

A second report was a one paged report: **DExh 2**, dated 26th April, 2016 tendered in court by the same person, this time for the 3rd defendant. It had a sketch showing a water stream that runs from Nkinzi road alongside **plot 20** and on the edge of **plot 19**, and beyond.

It was the only access road shown on the sketch. The said channel had a stream, a drainage and access road all in the same area and indeed as established by the survey report, and as seen by court during the *locus* visit, these features encroached partly on to the suit plot. The extent of the encroachment could not be determined with certainty, from the survey findings.

Pw1 Charles K. Okolong, a registered surveyor with *M/s Oringo & Company* carried out an inspection and evaluation report for the suit land. In his report, **PExh 7**, dated 9th September, 2015 he referred to an approximate 0.007 of an acre as having been taken up by the drainage and the new access road. However a perusal of the survey report on which he relied showed an area of 0.005 of an acre.

Yet another surveyor's report by **Cw1** dated 18th July, 2016 addressed to this court confirmed that the drainage channel passed into **plot 20**. An area of 0.01 acres was estimated as the actual

area of encroachment by the channel. Both **Cw1 and Pw1's** findings therefore required further verification on account of those discrepancies, which court failed to reconcile.

But be that as it may, there was no doubting the fact that the water flow and access road were partly on the suit land. However save for the diversion of the drainage water, there was no evidence directly linking the KCCA to the encroachment, so as to lead to the conclusion that it compulsorily acquired a portion of the suit land within the meaning of the **Land Acquisition Act** so as to justify an award for compensation to the plaintiff.

What the evidence led by the plaintiff was able to establish however was that KCCA all along knew about the perennial problem but actually failed/omitted/refused to address it at the appropriate time, despite the numerous reminders.

This was a potential health hazard not only to the plaintiff, but to the entire community KCCA was obliged to serve. It failed to carry out its duties to ensure proper maintenance of the water channel; failing to monitor, evaluate, oversee and maintain the public facility up to the required standards.

KCCA is faulted by its failure to rectify the problem which over time developed into a matter of serious concern for the entire community as the open channel collected all the filth and garbage for the growing population in that area, pouring everything into the swamp and making the place almost inhabitable, making it an eyesore .

But as deduced from the contents of the various correspondences between KCCA and the plaintiff, the problem on this land had started in 1994, even before the plaintiff had acquired the title to that land.

The suggestion made by the defendants in submission which court subscribes to, was that the plaintiff was aware of the division of the plot and so ought to have reasonably foreseen the potential risks and hazards which the drainage on his land presented, before buying and settling on that land.

Dw1, Kaweesa's evidence as a KCCA engineer was absolutely crucial to this case. He testified that an outlet had been created by KCCA to pour water and sewage in **plot 20**. Before then, it was passing through the neighbouring **plots 21 and 29** where it had been gazetted to flow, as clearly marked on the deed plan.

KCCA however blocked it, redirecting it to pass through the lower side where it found its way to **plot 20**. That complaints about the drainage began as far back as 1994. The said witness confirmed that the road had been illegally created as it was never gazetted.



It did not appear on the deed print and that this had affected the size of **plot 20**, reducing it by about 0.005 acres, estimated by him as the size/area of encroachment. According to **Dw4**, these plots had been created in the 1968s by KCC.

5 Court therefore found it rather absurd that KCCA which created the problem for the community was unable to find appropriate solutions for it.

It had initially committed itself to open the boundaries and maintaining the drainage channel but eventually did not. It later on tried to shift the burden to the plaintiff being the owner of the affected plot.

10 KCCA also failed to give an appropriate response to the serious allegation made that it had changed the drainage system in the area from its planned gazetted position to a new one passing under and/or near the plaintiff's buildings; and that this was because someone in the neighborhood had put up a storied house across the original drainage system.

15 The Authority takes the blame therefore for its failure to pay attention and/or take into serious consideration the overall effect this could have on the community. From the above findings therefore, a right to a healthy environment owed to the plaintiff did exist and was violated by KCCA.

Issue No. 2: Whether or not the 3rd defendant created an access road, without the consent and knowledge of the plaintiff.

20 The claim against the 3rd defendant as the registered owner of **plot 19**, was made by **Pw2**, Mr. Edward Kanyarusoke that the 3rd defendant took advantage during the Christmas holiday in December, 2014 to create an access road on the plaintiff's plot. He claimed that the 3rd defendant's plot originally had an access road which was not through the suit land.

25 Furthermore, in *paragraph 11* of his witness statement that the 3rd defendant never obtained a permit to construct the road on the suit land. It was the plaintiff's conclusion that the defendants trespassed on the plaintiff's land by creating an illegal drainage channel and access road thereon and had done so without his consent.

30 **Dw1**, Kigozi Richard the 3rd defendant in his defence however denied responsibility for the creation of the access road, claiming that at the time he purchased his land in 2007 the access road which currently serves his land, his neighbours and the community of both Kimwanyi and Busia Zones, was already in existence..

This was corroborated by **Dw4**, one Kabahweza Chucu Keroi. She had lived in Wandegeya for more than 30 years and only stopped being the Chairperson in the previous elections. In her

evidence she stated that she never saw KCCA create a drainage or a road on the suit land which was originally a swamp.

That KCCA's role was merely to maintain the drainage which it never created, and which according to **Dw4** has existed over the years, claims which the plaintiff disputed but failed to
5 disprove.

In reaction to that, KCCA claimed that the above evidence was enough to exonerate it from the allegation that it had been involved in the illegal access road. That the liability if any, fell squarely on the 3rd defendant who was neither a servant nor an agent of KCCA.

Counsel for the 3rd defendant however referred to the last *paragraph* of **PExh 4**, a letter dated
10 14th June, 2003 which was a complaint to KCCA where the plaintiff stated as follows:

....Now my plot was used as a walkaway path but to my surprise a new neighbor forcefully used it as a stepping stone to construct an access road to his place having changed the access to is place.. (emphasis added).

It is upon this that I am requesting your humble office to come to my rescue to rectify the issue of the sewage line that had been disposing waste in my plot for the last 20 years and the access road that has been constructed in my land as I have faith in your office (page 8 of plaintiff trial bundle.)
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As already noted the complaint was made in reference to incidents that had occurred around 1994, long before the 3rd defendant had bought **plot 19**, also before the plaintiff had bought his land.

The 3rd defendant therefore denied any act of trespass claiming that the water flowing from **plot 20** (suit land) passed through his land and also partly affected **plots 21** adjacent to **plot 20**, as well as **plot 22**.
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Dw3, Wasswa Hassan, who had been chairman of the Kimwanyi zone area since 1993 told court that there was a drainage which posed a security threat; and an access road created before the plaintiff bought the suit land and that the drainage was there even before he became the LC of the area.
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That sometime in 2014, the 3rd defendant had consulted the area leaders about the need to cover the drain since both **plots 19 and 20** were affected equally by the drainage channel but that when he approached his neighbor he did not buy the idea.

That the LCs had also approached him regarding this matter, but he still showed no interest. They advised the 3rd defendant to go ahead and work on his part of the drainage which he had done, with mobilization of the community through *bulungi bwansi* efforts.
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The witness faulted the plaintiff for suing the 3rd defendant before consulting the local leaders who had the prior knowledge and history of the area.

The evidence of both witnesses, **Dw3 and Dw4** which court found no reason to doubt was that the access road was originally created by medical students of Makerere University in the 1970s under the leadership of Otunnu and it has since been referred to as Otunnu road, and expanded into a bigger road with the help of the community, which claims the plaintiff refuted as intended to mislead court.

Upon inspecting the alleged access road during the *locus* visit, court noted that a fair access to **plot 19** belonging to the 3rd defendant from **plot 20 (suit land)** did exist. However that there was limited access for vehicles going beyond **plot 19** up to Binaisa Road.

The question therefore whether or not the 3rd defendant created an access road, without the consent and knowledge of the plaintiff therefore did not arise.

Conclusion:

Access was defined in the case of **Mugisha Stephen Vs Karugaba Yostasi HCCS No. 0050 of 3013** where court relied on the **Black Law Dictionary 6th Edition page 12** as denoting the right vested in the owner of the land which adjoins a road or other highway to go and return from his own land to high way without obstruction. Access to property does not necessarily carry with it possession.

Such evidence as highlighted above proved that an access road was in existence prior to 2007, when the 3rd defendant purchased the land for use but not for possession by KCCA or any member of the community.

With assistance by the community and consultation with the LCs, the 3rd defendant acted in good faith when he repaired for the community what was already in existence. The evidence that the plaintiff had been consulted but declined to cooperate proved he had knowledge of whatever was happening.

Also as correctly pointed out by counsel for the 3rd defendant, when a person purchases land and becomes the registered proprietor of the same, he does so subject to the existing rights on the land, which includes easements.

Where an easement in the land is created, a person has a right to use the same, subject of course to the owner's rights. An easement does not confer ownership/possession but it confers a right to use/access.

The plaintiff did not adduce any evidence to support his belief that it was the 3rd defendant who had initially created the ungazetted access road, and that when he poured the soil on the land it was for his sole benefit and exclusive use/selfish gain. The plaintiff's complaint against his neighbor was therefore misdirected and not well thought out.

- 5 In light of the above findings, the creation of the road did not happen at the instance of the 3rd defendant in 2014 but some years before the 3rd defendant purchased his land and for ease of quick passage to Mulago by students.

As declared in **Barclays Bank versus Patel [1970] EA 99** a way of necessity arose by operation of law and it continues to exist notwithstanding that it was not referred to in the certificate of title to the servient tenement. Blocking the road would deny the community in the area access to their homes.

From **Pw2's** evidence at cross-examination all in all, what his father had actually wanted was a proper constructed drainage by KCCA and gathered from the evidence of Patrick Kaweesa, **Dw1** he wanted KCCA to align the existing natural drain in his land to limit its expansion and also to protect the existing structures.

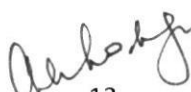
It was also his evidence which was confirmed by court following the *locus* visit that the lower end of Nkinzi Road was covered by natural developed swamp where the surface flow from Nkinzi Road was directed. The correspondences **PExh9 and PExh10** proved that the KCCA did acknowledge its mandate to manage the drainage. But deliberately failed to meet that expectation.

- 20 The plaintiff to that extent had a cause of action against KCCA. In response to **Issue No. 2**, no cause of action was disclosed against the 3rd defendant.

Issue No. 4 Remedies:

The plaintiff's prayers therefore were: *a declaration that the plaintiff is the rightful owner of the suit land; the defendants are trespassers on the plaintiff's land; an order compelling the 1st defendant (KCCA) to move the drainage channel back to the original position of flow between plots 21 and 29; or direct it to move to another main channel but not through the plaintiff's land.*

The plaintiff also prayed for a permanent injunction against the defendants, their assigns and successors in title from further trespassing on the suit land; and compensation for the illegal occupation, development and unplanned use of his land in respect of the value of the suit land that was illegally acquired by the defendants.


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According to **Black's law Dictionary, 8th Edition, Page 301** compensation means payment of damages or any other act that a court orders to be done by a person who has caused the injury to another.

5 The compensation in this case was in respect of the injury suffered by the plaintiff on account of the KCCA'S failure to fulfill its role of maintaining public facilities as mandated by law, thus causing inconvenience and exposing the plaintiff and the community to health hazard over a period of time. This court faults the KCCA on account of its decision to divert the flow of drainage water to an area which had not been planned, without giving proper explanation.

10 Mr. Charles Okolong a land valuer who testified as **Pw1** tendered in a valuation report of the suit land dated 9th September 2015. (**See PExh-7**) which indicated that the value of the land taken by the access road and drainage was **Ugx 116, 889,500/=**. He claimed however that given the passage of time the value of the affected land had now accumulated to **Ugx 233, 779,000/-**. His estimated value of the land was **Ugx 1,500,000,000/-**.

15 The above notwithstanding, there was no evidence to merit that award since the plaintiff had failed to prove that the KCCA had compulsorily acquired any portion of the plaintiff's land. Besides court noted that the actual area affected was never ascertained.

Secondly, the plaintiff was fully aware of the challenges and possible risks of acquiring land which from the plaintiff's correspondences with KCCA, already had a drainage flow and a pathway even before he purchased that land in 1996.

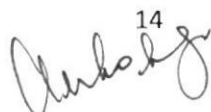
20 Thirdly the community which had created the easement which later became the access road before the 3rd defendant bought **plot 19** was not made party to this suit.

All in all the available evidence against the KCCA was based on its negligence, having failed to cover the open drainage channel and maintain it. Over the years it became a health hazard to the community.

25 **General damages.**

It is trite law that damages are the direct probable consequences of the act complained of such loss of use, loss of profit, physical inconveniences, mental distress, pain and suffering. (**Kampala District Land Board Vs Venansio Babweyana Civil Appeal No. 2 of 2007**)

30 Given all the inconveniences and unquantifiable damages suffered by the plaintiff due to the KCCA's failure to maintain the drainage, the area became a dumping ground for rubbish and filth, making it also a breeding ground for mosquitoes and a health hazard not only to the plaintiff who was directly affected as the owner of the plot but also the entire community in that area. .

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In addition, the drainage channel is wide and open, which makes it dangerous and susceptible to abuse by wrong elements in the community. The plaintiff's prayer for general damages was therefore justified.

Accordingly,

5 The following are the orders of court:

1. ***An order issues for KCCA to cover the open drainage within a period of six months from the date of delivery of this ruling and to direct KCCA to carry out periodical maintenance of the drainage channel.***
- 10 2. ***An award of Ugx 50,000,000/= as damages is made to the plaintiff as general damages payable by KCCA on account of its failure to carry out its duties, which amount shall attract interest of 15%, payable from the date of delivery of this judgment until payment is made in full.***
- 15 3. ***Costs of the suit shall be paid to the plaintiff by KCCA.***
4. ***The plaintiff to meet costs of the 3rd defendant.***


Alexandra Nkonge Rugadya

20 **Judge**

14th June, 2022

