

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 902 OF 2019

1. VILLA MEMBERS TRUST
2. SPORTS CLUB VILLA:..... PLAINTIFFS
VERSUS
UGANDA NATIONAL ROADS AUTHORITY:..... DEFENDANT

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA


JUDGMENT

The Plaintiffs claim against the defendant is for the following:


- i. Compensation for land/property/training grounds now known as Villa Park Nsambya on Mukwano Road.
- ii. Disturbance allowance.
- iii. General damages for inconvenience arising out of unlawful eviction.
- iv. A permanent injunction restraining the defendant from alienating the suit property /land training grounds or any part of it without compensation.
- v. Costs of the suit and any other reliefs as the court may deem fit.

The Plaintiffs cause of action against the defendants as stated in their plaint is as follows:

- a) That in or about the year 1976, the club entered on the suit land now known as Villa Park with permission from Uganda Railways Corporation the registered proprietor.


22/07/2022


- b) That they developed on the land a training ground which they have utilised for a period now exceeding 40 years as tenants by occupancy of the Uganda Railways Corporation.
- c) That it is against this continuous use of the suit land by the Plaintiffs and that the said land came to be known as Villa Park Nsambya and it is still named so on all online maps and that of KCCA.
- d) That while the Plaintiffs were still in occupation of the suit land, on or about the 19th day of July 2019, the defendant served on the Plaintiffs a letter asking them to vacate the right of way /road reserve claiming that there were court orders issued on the 27th May 2019.
- e) That the Plaintiffs responded to the said notice asking the defendant to comply with the legal requirements for eviction /land acquisition but they neglected it.
- f) That on or about the 26th July 2019, the defendant heavily deployed security personnel and forcefully evacuated part of the Plaintiffs training grounds disrupting training and destroying the property on it.
- g) That the officers of the defendant were also watched and heard in the media claiming that they had discussed with the Plaintiffs to take part of its training grounds for purposes of constructing thereon a flyover.
- h) That following the defendant's illegal actions, the club suffered great inconvenience, loss, embarrassment for which they claim general damages.
- i) That the Plaintiffs have on several occasions asked the defendant to compensate them for the loss of the suit land among other claims but they have failed /refused/ignored to comply hence this suit.


22/07/2022

- j) The Plaintiffs further contended that the defendant is under obligation to investigate and compensate the interests /claimants on the land before they can take it for such projects but the plaintiffs were not compensated nor given adequate notice.
- k) The Plaintiffs contend that the alienation of Villa Park by the defendant has caused public outcry and many have come out to write about it expressing the untold pain and loss the sports industry has suffered in the hands of the defendant who has alienated the said sports facility without replacing it.
- l) The Plaintiffs contend that they have been in use of the suit land since the 1970's and this was public knowledge.
- m) The Plaintiffs further contend that that they have a legal interest in the suit land for which they are entitled to compensation from the defendant before they can lawfully acquire the land for whatever purpose.
- n) The Plaintiffs further contend that they were not given adequate notice and for that reason they are entitled to disturbance allowance.
- o) The Plaintiffs contend that the remaining part of the land cannot be used as training grounds and the defendant ought to compensate them for the whole interest in the land /property now known as Villa Park.
- p) The Plaintiffs further contend that the eviction by the defendant of the Plaintiff from the suit land was illegal as they failed to comply with the current legal regime of the court guidelines for eviction.

The Plaintiffs are therefore praying for judgment against the defendant and for the following orders/declarations:


- i. Compensation for the suit land known as Villa Park on Mukwano Road.


22/07/2022

- ii. Disturbance allowance.
- iii. General damages for inconvenience arising out of the unlawful eviction.
- iv. A permanent injunction restraining the defendant from alienating the suit land or any part of it without compensation.
- v. Costs of the suit.

In their written statement of defence the defendant states inter alia:

1. That in or about 2017 the defendant embarked on the process of land acquisition for the Kampala flyover project.
2. That among the affected persons during the data capture and field survey exercise, none of the plaintiffs properties were identified falling within the intended right of way.
3. That instead it was Uganda Railways Corporation (URC) that was identified as the project affected entity owning about 8 acres of land that was to be expropriated.
4. That Uganda Railways Corporation could not be compensated for its land comprised in **Plot 13-29 Nsambya Road FRV 216, Folio 4** because of multiple claims over the said land.
5. That due to the multiple disputes over the said land and the urgent need for the land, the defendant applied to court vide **Miscellaneous Application No. 541 of 2019; Uganda National Roads Authority versus Uganda Railways Corporation and others** for among others an order authorising it to deposit the compensation sum of **7,578,672,000/=** and to authorise it proceed with the construction of the Kampala flyover on the said suit land.


22/07/2022


6. That on the 24th May 2019, the Court granted the said application and authorised the defendant to deposit the said compensation sums in court and then proceed with the construction works on the suit land.
7. That the land which the defendant seeks for compensation is registered in the names of Uganda Railways Corporation and was legally acquired when its compensation sum was deposited in court and the defendant authorised to proceed with the construction works on the suit land.
8. That the Plaintiffs occupation of the suit land with permission from Uganda Railways Corporation did not entitle them to compensation as alleged.
9. That the Plaintiffs were notified of the intended eviction.

The defendant prays that the suit should be dismissed with costs.

In their joint scheduling memorandum, the following issues were raised for determination:

- 1. Whether the Plaintiffs were lawfully evicted from the suit land.**
- 2. Whether the Plaintiffs are jointly and or severally bona fide occupants on the suit land.**
- 3. Whether the Plaintiffs are entitled to compensation from the defendant.**
- 4. Whether the Plaintiffs are entitled to other remedies prayed for in the plaint.**

The Parties proceeded by way of witness statements from which they were cross examined. The detail of their evidence is on record. The parties then filed written submissions the details of which are on record and which I have considered in determining this matter.


22/05/2022

1. Whether the Plaintiffs were lawfully evicted from the suit land.

It was an agreed fact that the Plaintiffs were in possession of the suit land when the defendant carried out the eviction they had been occupying for a period exceeding 40 years. It was an agreed fact that the suit land had come to be known as Villa Park because of the Plaintiffs long stay on the property in issue. It was also an agreed fact that the Plaintiffs were still in possession of the residue of the land in issue.

It was also an agreed fact that the execution was carried out by way of demolition of the Plaintiffs offices and grading part of their training grounds.

It was also an agreed fact that the court issued an order vide **Miscellaneous Application No. 541 of 2019 arising out of Miscellaneous Application No. 989 of 2013 arising out of Civil Suit No. 440 of 2013; Uganda National Roads Authority versus Apollo Waswa Basudde and seven others dated 27th May 2019** executed to evict the Plaintiffs was issued in respect of the properties comprised in **Plot 13-29 Nsambya Road FRV 216 Folio 4.**


In the said order the defendant who was the applicant in the said application was allowed to proceed with the construction of the Kampala Flyover /Project on the suit land.

It is evident that the Plaintiffs were issued with eviction notices after the defendant had deposited in court the compensation sum for **Plot 13-29 Nsambya Road** from which the Plaintiff's Kibanja was situate. The said Court Order was therefore used as a basis to evict the Plaintiffs. Since the eviction was sanctioned by a Court Order it was lawful. The Plaintiffs were at liberty to apply for review of the said order if their interests in the suit land were at stake. The Plaintiffs now seem to be pursuing for compensation of their land in this case.

ISSUE 2: Whether the Plaintiffs are jointly and /or severally bona fide occupants on the suit land.

Section 29 (2) of the Land Act Cap 227 (as amended) defines "Bona fide Occupant" as a person who before coming into force of the Constitution-

(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more ; or


22/07/2022

(b) had been settled on the land by the Government or an agent of the Government, which may include a local authority."

It is not disputed that the Plaintiffs have settled on the suit land for more than 40 years. This was a fact agreed on in the joint scheduling memorandum.

In her witness statement, Oyella Juliette Okwir who testified as defence witness one (DWI) stated in paragraph 19 of her witness statement stated that on the 11th June 2021, URC's lawyers –Kituuma –Magala and Company Advocates had responded to the defendant's request, confirming that Villa had its training grounds on URC's land for 30 years and as such a bona-fide occupant on the said land. This is my view is an admission on part of the defendant that the Plaintiffs are bona fide occupants on the suit land. **Section 28 of the Evidence Act Cap 6** provides that ***"Admissions are not conclusive proof of matters admitted, but they may operate as estoppels under the provisions hereafter contained."*** The defendant having admitted that they were advised to recognise the Plaintiff's interest on the suit land as a bona fide occupant thereon, are estopped from challenging that fact in this suit.

The Plaintiffs had developed the suit land unchallenged by the registered owner for more than twenty years before the coming into force of the 1995 Constitution and therefore qualify as bona fide occupants of the suit land within the ambit of that definition.

Issue three: Whether the Plaintiffs are entitled to compensation and other remedies prayed for from the Defendant.


Article 26 of the Constitution of the Republic of Uganda provides that

"(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

(b) the compulsory taking of possession or acquisition of property is made under the law which provides for-

(i) prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property;


22/07/2022

And

(ii) a right of access to a court of law by any person who has an interest or right over the property."

During the Scheduling conference, a consent order was made that the Plaintiffs would be paid compensation in accordance with the Chief Government Valuer's report in respect of the land that was affected. The figure arrived at was **three billion, twenty nine million, seven hundred and sixty seven thousand shillings (3, 029,767,000/=)**. The said consent order has never been set aside and therefore stands. The advice of the Attorney General's advice cannot set aside a consent order entered before the Court. The Court has to be moved formally to set the order aside.

The said amount of money had been ordered by court to be deposited in court but it has not been deposited to-date.

It is therefore because of the delayed compensation and yet the Plaintiff's land was expropriated by the defendant to construct a flyover that I will award the Plaintiffs **two hundred Million shillings (200,000,000/=) as general damages.**

I will award the Plaintiffs interest on the sums awarded at a percentage of **10 % per annum** from the 26th July 2019 when the suit land was expropriated until payment in full.

I will also award the costs of this suit to the Plaintiffs.



Hon. Justice John Eudes Keitirima

22/07/2022