

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCT-00-LD-MA-1552-2021**  
**(Arising from LD-CS-NO. 342-2016)**

**DONOZIO MUSISI SEKYAAYA:::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**ELLY KAYANJA & 2 ORTHERS::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. MR. JUSTICE TADEO ASIIMWE**

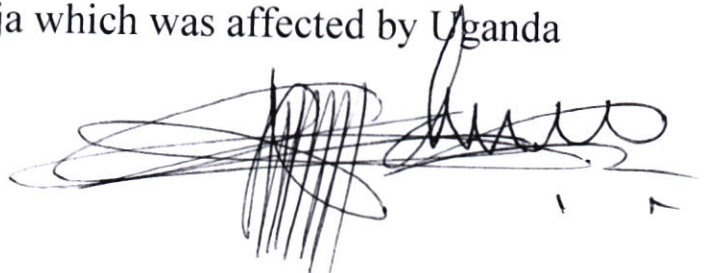
**RULING**

**BACKGROUND:**

This application was brought under Order 51 rule 6, Order 52 rules 1, 2 & 3 of the Civil Procedure Rules (CPR), sections 98 of the Civil Procedure Act (CPA) & section 33 of the judicature Act.

The Applicant filed this application seeking for the following orders;-

1. An order directing the Registrar High court to pay Donozio Musisi Sekyaaya UGX 119,154,737/= being money in respect of compensation for part of his kibanja which was affected by Uganda





National Roads Authority Northern by pass expansion project valued and assessed by Uganda National ROADS authority and deposited to High court as part of Misc. application no.1504 of 2018 arising from high court civil suit np 342 of 2016.

2. That the said money UGX, 89,154,737/= ( eight nine million one hundred fifty four thousand seven hundred thirty seven shillings) be paid on Account No. 0200097992 held in housing finance bank Nakasero Branch in the names of DONOZIO MUSISI SEKYYAAYA and 30,000,000/= be paid on Account NO. 3100063985 Centenary Bank Account Mapeera Branch in the names of Tusiime, Irumba & co. Advocates.
3. Costs of the Application be provided for.

The background of this application is that the applicant's kibanja situate at Mulago Block 5 plot 584 was affected by a road constructed by UNRA.

That UNRA under took to pay compensation for the same but failed to do so due to disputes of ownership by different persons on the land including the registered proprietors of the land which led UNRA to deposit the assessed amount in the high court pending resolution of the disputes. Civil suit number 342 of 2016 which was pending in court was determined in favour of the respondents where in the applicant was not a party to the said suit. He however filled this application seeking to benefit from the funds deposited in court by UNRA.



The applicant raised the following grounds:-

1. That the Applicant is the owner of Kibanja situated at Block 5, plot 584 land at Mulago which he has been in possession since 1981.
2. That in the year 2014, Uganda National Authority undertook the process of acquisition of land for expansion of the kampala Nothern bypass.
3. That during the said exercise, part of the applicant's kibanja was affected by the said project and valued for compensation at UGX 119,154,737/=
4. That due to unresolved disputes of ownership on plot 584, Block 5 land at Mulago which was subject of a suit vide HCCS 342 of 2016, Uganda National Roads Authority couldn't compensate the applicant and deposited the money with court.
5. That Uganda national roads Authority deposited the sums with the registrar high court land division until the determination of HCCS 342 of 2016 in favor of the respondents.
6. That on the 12<sup>th</sup> day of August 2021, court determined HCCS 342 of 2016 in the favor of the respondents.

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7. That the respondents do not deny the Applicant's Kibanja and compensation whatsoever.

8. That it is in the interest of justice that since the disputes on the said land have been resolved, court directs the applicant to be paid compensation that was valued in respect of his Kibanja as per orders sought.

9. That it is in the best interest of justice that this application be granted expeditiously.

On the other hand, the Respondent in his affidavit in reply dated 02/09/2021 opposing the application.

At the hearing the Applicant was represented by Counsel Aisu Isaac Nicholas while the Respondent was represented by Counsel Kazibwe Magellan together with Counsel Ambrose Tibyasa and Fred Erisata. Both Counsel made oral submissions which I will consider in this Ruling.

The gist of the pleadings and the submission is that the applicant is allegedly a kibanja holder on the suit land whose rights were determined in civil suit no 342 of 2016. Where he was not party. The applicant seeks to benefit from the fruits of the said decision

The Applicant's Counsel has submitted relying on the applicant's affidavit that UNRA'S act of depositing compensation money in court without informing the applicant was done in bad faith. That the applicant's Kibanja and developments was accessed by UNRA at UGX 119,154,737/= which was deposited in the high court vide MA no. 1504





of 2017. That the applicant was not aware of the pending suits in court. He prayed that this court should direct the register high court to pay the applicant the above accessed amount.

In response the respondent's counsel submitted that that the applicant lacks locus to initiate this application seeking to benefit from an order in which he was not a party. That the applicant is a total stranger to the proceedings in the original case (CS no. 342 of 2016 from which this application arises and the basis for depositing money in court. That the applicant was neither a party to the main case and the application which led to the posting of the money in court. In his view a party can only enforce rights in a decree where he or she is a party. He further submitted that UNRA is not the right authority to determine party's disputes and this application is not for determination of parties rights since the same were determined in the original case. That therefore the applicant has no right to make this application since his rights of ownership of kibanja have never been determined by any court and his interest has never been recognized by the respondents as registered proprietors. Therefore his claim for compensation cannot arise. As it seeks to enforce a false right. He invited court to dismiss this application with costs.

### **DETERMINATION**

From the pleadings and submissions of both Counsel, it is clear that the applicant claims a kibanja interest in the suit land which was taken over



by UNRA and whose consideration was deposited on the court account due to several disputes on the land.

It is also clear that court in civil suit no.342 of 2016 the disputes on the suit land were settled in favor of the respondents who are the registered owners. Unfortunately the applicant was not party to the suit from which this application originates. His kibanja interest was not determined and the same cannot be determined in this application. In the absence of such a determination, the applicant has no basis to claim any compensation in the suit land.

Therefore UNRAS effort to determine the consideration on the kibanja interest can only materialize if the kibanja interest in its self is established. As of now the determination by UNRA is immaterial as regards the kibanja interest which is in contention.

Secondly the applicant seeks to benefit from the decree of court where he was not party. Although the applicant's counsel submitted that the applicant was not aware of the pending suit in court, annexure D to the application, is a letter dated 19<sup>th</sup> February 2020 wherein UNRA communicated to the applicant about the deposit of money in court and the pending suits were indicated in the letter. That was sufficient notice to the applicant. He therefore cannot claim not having knowledge of the ongoing cases at the time. He had an option of joining the case as a party which he did not do. Even if it were true that the applicant was not aware



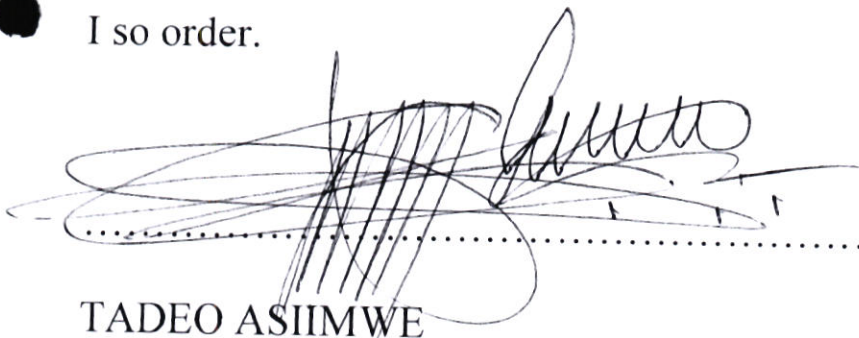


of the ongoing cases at the time his remedy does not arise through this application which intends to make him a beneficiary of a decree he was not party to. It is quite impracticable.

In my view, this application is misconceived, and lacks merit and is hereby dismissed with costs.

The applicant is free to peruse his Kibanja interest in whatever way he pleases.

I so order.

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TADEO ASIIMWE

JUDGE

06/10/2022



