

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 710 OF 2017

5 **JAMES SSENKYANGE**

(suing through his lawful attorney, Sylvia Nalumansi Marvis:.....) **PLAINTIFF**

VERSUS

10 **KAMPALA CAPITAL CITY AUTHORITY:..... DEFENDANT**

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT:

Introduction:

15 The plaintiff, Mr. Ssenyange James is the registered owner of land comprised in **Kyadondo Block 2 plot 314**, land situated at Namirembe. He filed this suit through his lawful attorney, Nalumansi Sylvia Marvis, seeking against Kampala Capital City Authority (KCCA), a permanent injunction restraining it from trespassing onto the suit land or in the alternative, compensation; general damages for trespass; costs of the suit; *mesne* profits.

Representation:

20 The plaintiff was represented by **M/s Century Advocates**. The defendant was represented by the Directorate of Legal Affairs, at the Kampala City Council Authority.(KCCA). Both counsel filed written submissions as directed by court.

Attempts were made by both sides to settle this dispute. These were however futile. At the scheduling, the following were the agreed facts; disagreed facts and issues.

25 **Agreed facts:**

- 1) ***That the land in question is comprised in Kibuga Block 2 plot 314 measuring 0.142 hectares (35.1 decimals);***



2) *That the plaintiff is the registered owner of the suit land;*

3) *That the defendant offered compensation package of ugx 464, 968,000/= to the plaintiff but revised the offer to Ugx 67,298,000/= which the plaintiff rejected.*

Disagreed facts:

1. *That the entire suit land was already occupied by an existing road.*

2. *That what was undertaken by the defendant was merely an upgrade.*

3. *That the defendant carried on expansion works on the already existing road thus affecting the plaintiff land.*

4. *That the 13 decimals of the plaintiff's land were taken up as for the expansion of the road by the defendant in addition to the 12 decimals onto which the existing road was seated.*

5. *That there were errors committed by the defendant's road design/valuation consultants, UB Consulting Engineers Ltd.*

6. *That the correction of errors resulted into smaller area of plaintiff's land used up resulting into a reduction in value of Ugx 397,670,000/=.*

7. *That the plaintiff consented to the defendant's works or encroachment onto the land.*

Issues:

1) *Whether the defendant had trespassed on the plaintiff's land.*

2) *Remedies.*

Issue No. 1: Whether the defendant trespassed on the plaintiff's land.

Burden and standard of proof.

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**).

But that burden may shift to the defendant, such as would require him/her to adduce evidence sufficient to support the rebuttal of the evidence raised against him/her. (**See also: S. 101, S. 102 and S. 103 of the Evidence Act Cap 6 and Mudiima & 5 Ors Vs. Kayanja & 2 Ors (Civil Suit 232 of 2009) [2014] UGHCLD 34**).

It is not in dispute that the plaintiff is the registered owner of the land comprised in **Kyadondo Block 2, plot 314, land at Namirembe** along Hoima Road (suit land).

A suit for *trespass* to land is premised on the possessor's right to exclude and requires proof of the fact that the defendant did or caused something tangible to cross the boundary line onto the plaintiff's land.

An intentional trespass occurs when the defendant knowingly or deliberately crosses the boundary lines of another's land, either personally or with an object large enough to displace the owner of possession. (**Ref: Nyero Olweny & Others Civil Appeal No. 50 of 2018**)

In **Justine E.M.N. Lutaaya Vs Stirling Civil Engineering Co. Civil Appeal No. 11 of 2002 (SC)** it was held that trespass for land occurs when a person makes an authorized entry upon land, and thereby interferes or portends to interfere with another person's lawful possession of that land. The burden lies on the plaintiff to prove that the defendant illegally entered on to the suit land.

The plaintiff who testified as **Pw3** relied on the evidence of 4 other witnesses. He informed court that the land in dispute was originally owned by his grandfather, passed on to his father who bequeathed it to him. He presented a certificate of title **PExh 1**, for the suit land.

It indicates that he got registered on the title on 10th March, 2016. The previous owners were Efulansi Musoke Michael Lubowa and Esther Musoke, co-administrators of the estate of the previous owner K.K. Musoke, who had acquired the title on 5th September, 1949.

That he had been in possession thereof until around April, 2017 when the defendants forcefully entered into the land by way of expansion and construction of the road. However that before the



construction commenced the defendant's officials approached him with a disclosure form dated 6th April, 2016 offering to pay him **Ugx 464,968,000/=** as compensation.

The two sides had signed a disclosure form but about four months later presented him with another disclosure form for **Ugx 67,298,000/=**, which he rejected thus withdrawing his consent.

- 5 That upon inquiry, he was informed that the road design had been changed on account of the errors and reduction of the proposed area to be utilised.

The plaintiff however asked for the old and new design from the defendant, to enable him reach a conclusive decision but none was availed to him. This had not stopped the defendant from carrying on the works, without prior compensation to him.

- 10 The plaintiff also claimed that of the 0.25 acre of land, 0.12 acre were the existing area used by the defendant which had never been compensated for. The new expansion took another 0.13 acres and as per as per valuation report dated of 7th October, 2019, filed by **Pw4**, Mr. Boaz Tukahirwa, the estimated value of that land was **Ugx 577,000,000/=**. (**PExh 3**).

- 15 **Pw 4** had based his report on a boundary opening for the land in dispute which had been conducted on 7th October, 2019 by **Pw5**, Mr. Michael Baguma, a surveyor with **M/s Adelten Consult Ltd** who informed court that he was appointed by the plaintiff to establish the size of the old road, extents, size of road expansion works and the residue.

- His findings were that the suit land has an area of 0.142 hectares or 0.35 acres which as established by court, tallied with the acreage on his title. According to the survey report, the road
20 extents before the current expansion works were found to take up approximately 0.047 hectares or 0.12 acres/decimals.

That in the process of the new road works, the road extensions took up an extra portion of 0.052 hectares or 0.13 acres/decimal. The total area acquired by the defendant for the expansion, was 0.099 hectares or 0.25 acres which left only 0.043 hectares or 0.10 decimals as the residue.

- 25 That upon request by the plaintiffs lawyers they conducted a joint survey with the defendant's surveyors and the two sides in compliance with that request, confirmed the findings as expressed in the survey report dated 7th October 2019.

- The plaintiff further claimed that the road which traverses his land began as a small road for pedestrians. It was later expanded and tarmacked in the late 50s. His father became owner of
30 the title of the land; and that the section of the land which was used as a road could not be utilized for anything else.

That before the expansion there was land which he could have put to use as a petrol station or for other purposes. The neighboring **plot 312** had also been inherited by him from his father. The plaintiff's claim was that he had been deprived of his right to own possess and utilize his land and his prayers were for compensation of the acquisition of his land, commensurate to value of the land.

His evidence was supported by that of his mother, Ms Fulansi Miriamu Nalugwa Musoke, aged 90 years. Testifying as **Pw1**, she confirmed to court that she had resided on the land from 1940s and that she, the plaintiff and the rest of her family had been in possession of the said land until about November, 2017 when the defendants forcefully entered the suit land through the upgrading and expansion of the road works on the existing road.

In further corroboration of her son's evidence, she claimed that she learnt, to her surprise that the amount of compensation which was originally offered to his son and which he had signed for under the disclosure form had been reduced by the defendant from **Ugx 464, 968,000/=** to **Ugx 67,298,000/=**, under the pretext that the road design had been changed due to errors and reduction in the original proposed area.

That amid protests by the plaintiff and despite the fact that the suit was ongoing, the defendants had commenced the road works around November, 2017 and in the process her fence had collapsed, although it was later on repaired by the contractor.

Pw4, Mr. Boaz Tukahirwa, in his valuation report (**PExh4**) provided an assessment of **Ugx 577,000,000/=** as value of the property, broken down as **Ugx 40,869,565/=** for the old alignment measuring 0.12 decimals.

The new alignment measuring 0.13 acres was valued at **Ugx 460,869,565/=**. The disturbance allowance of 15% amounted to **Ug 75,260,870/=**. That since the land has appreciated the compensation ought to be paid at the current market value rate.

During cross examination he admitted that the report had no comparisons to estimate value of neighbouring areas but that the value as estimated was based on the developments in the area and based on the fact that the land could have been utilized by the plaintiff for other purposes.

The sole witness for the defendant, Mr. Charles Tumwebaze, the project coordinator for the defendant who despite the fact that he had filed a witness statement, did not turn up in court to testify.


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Decision of court:

I have carefully read the submissions and the evidence by both counsel details of which are on record, and which I have duly taken into consideration in this judgment.

5 The burden of proof lies 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 PExh 2** is the disclosure form signed by the plaintiff on 8th April, 2016.

10 In the present case, the plaintiff's mother who testified as **Pw1** had also endorsed the disclosure form as his next of kin. The document was signed in the presence of **Pw 2**, Godfrey Mukasa, a member of the RC 1, Bukesa village.

He informed court that the plaintiff had appeared with KCCA officials who had informed him that they intend to carry on road upgrades and expansion of the road which were likely to affect several residents, including the plaintiff.

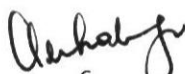
15 Counsel for the defendant made submissions to the effect that the defendant had arrived at the figure in assessment report generated by **Ms UB Consulting Engineers Ltd**, approved by the Chief Government Valuer on the 15th October, 2015.

20 The plaintiff signed a disclosure and consent form on 10th May, 2016 which allowed the defendant to commence the upgrade road. However that before compensation could be effected, several other affected persons raised complaints about the impact on the road on their properties.

A design review was undertaken and that the impact on the plaintiff's land was reduced because the land entirely sat entirely in the existing road and attracted only 10 percent of the average market value.

25 The defendant engaged the community affected including the plaintiff, in some meetings and the changes were explained. The review resulted in the reduction of the compensation; and the plaintiff was informed accordingly.

Counsel cited the case of **Stewart Gawaya Tegule vs KCCA, Civil Suit No. 214 of 2011** where court declared that the access arises by prescription, or long use or existence of the access road. He also referred to the defendant's function as the KCCA to construct and maintain roads, as
30 mandated under **section 7(g) of the KCCA Act, 2010**.


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Although his arguments were not backed up by any supporting evidence, it was not in dispute that the land in question was encumbered by the Bakuli- Nakulabye- Kasubi (Hoima) Road which encumbrance had existed even before the plaintiff became registered proprietor on the certificate on the 10th March, 2016.

- 5 It is also correct to argue that the predecessors including the plaintiff's father never raised any complaint about the use of this land when it was tarmacked and utilized as an access road, for a period of now more than 50 years.

Counsel's argument was that since an easement was already in existence on that plot created over the years, it would be wrong to call the defendant a trespasser on that land.

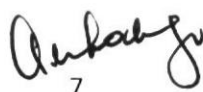
- 10 In ***Paddy Musoke vs John Agard , Andrew Doery and Eva Winfred Mayanja HCCA No. 36 of 2012***, cited by counsel, court found that the registered proprietor can commit trespass by blocking an existing access road. Court further held that even if the appellant owned the plot over which the access road passed, he owned it subject to the existing easement, regardless of whether or not it was registered. I do not find these arguments applicable to the present
15 circumstances.

- What is applicable is **section 71 of the Land Act, Cap. 227** as cited by counsel, which provides that all land whether alienated or unalienated is subject to the existing public rights of way which shall be reserved and vested in the Government on behalf of the public; and all such rights of way shall be maintained by the public uninterrupted, unless they are terminated or altered by
20 the direction of the Minister in writing.

The above however must be considered with due regard to the provisions of **Article 26 of the Constitution of Uganda** which stipulates that: no person is to be compulsorily deprived of property or any interest in or right over property of any description, except where the following conditions are satisfied:

- 25 1. ***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***
2. ***the compulsory taking of possession or acquisition.... is made under a law, which makes provision for prompt payment of fair and adequate compensation, prior to the***
30 ***taking of possession or acquisition of property.***

Article 237 (2)(a) of the Constitution furthermore gives the local government power to acquire land in the public interest. The conditions governing such acquisition are prescribed by


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Parliament. Ref. (**Land Acquisition Act, Cap. 226 and Land Act, Cap. 227**). Thus a person having interest in land compulsorily acquired by Government is entitled to compensation.

Unlike the **Land Act**, which was passed in 1998 with amendments later, the **Land Acquisition Act** was enacted in 1965, some thirty years before the promulgation of the Constitution. By virtue of the provisions of the **Land Acquisition Act, Cap. 226**, it is only the person who is authorised by the Minister that can enter with the objective to acquire that land, survey it or do any other such other thing to ascertain the suitability for the purpose for which it is intended. (**Section 2 (1)**). 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.

These provisions received reinforcement from the enactment of **Land Act, Cap. 227**, with some provisions bearing similar objectives as those under the **Land Acquisition Act, Cap. 226**. **Section 42** of the **Land Act** for instance states that the Government or a local government may acquire land in accordance with **articles 26 and 237 (2) of the Constitution** (cited above).

For some reasons however which are not so difficult to guess, counsel for the defendant did not address court on the requirements in **section 73** of that same Act, that where it is necessary to execute public works on any land, an authorized undertaker shall enter into mutual agreement with the occupier or owner of the land in accordance with the Act; and where no agreement is reached, the Minister may, compulsorily acquire land in accordance **section 42**. Going by the contents of those provisions, an entity seeking to take over some property compulsorily can only do so must not do so after involving the Minister.

Under **sub section (3)**, the authorized undertaker executing public works must *promptly pay compensation* to any person having an interest in the land for any damage caused and for the land and materials taken.

In this case however, the only correspondence between the plaintiff and the defendant is the disclosure form which the two had endorsed in 2016, but which was never executed because the defendant purportedly made a decision to alter the area design.

As submitted by the plaintiff in rejoinder, there is no proof that there had been a review of the design and other than the disclosure form, there is no evidence of a mutual agreement between the parties as envisaged under **section 73 of the Land Act**.

Without following the procedures as streamlined in the law, and after circumstances had allegedly changed, the defendant who from the findings of the unchallenged survey report entered 0.13 acres of the plaintiff's land, doing so without prior, fair and adequate compensation, could



not therefore rely on that form to claim that he had obtained prior consent before carrying out the expansion. The said consent had conditions that the defendant had to fulfil.

The defendant had every right to exercise its mandate over the old existing road, but not in respect of any extra portion of land which from the report measures 0.13 acres, over which no consent was ever secured before the road expansion.

It is also true that under **section 7(g)** of the **KCCA Act, No. 1 of 2010** it was the function of the defendant to maintain and carry out repairs on the roads. However nothing in that Act can be construed as exempting the defendant from complying with the provisions of the law. As correctly pointed out by counsel for the plaintiff in his rejoinder, the defendant, (even as a holder of such public rights in trust), cannot be allowed to act arbitrarily, and/or against the law.

In respect of the area previously covered by the road prior to expansion therefore no action in trespass can succeed since there was acquiescence for over a period of time by the plaintiff's predecessors in title over the use and development of part of the land as an easement.

At common law, *acquiescence of a degree that amounts to passive encouragement, may by way of a proprietary estoppel, deprive an owner of land in favour of an occupier of land in possession under a mistaken belief in his or her own inconsistent legal right, when it is unconscionable for the owner to reassert his or her title (see Willmott v. Barber (1880) 15 Ch D 96 and Taylors Fashions Ltd v. Liverpool Victoria Trustees Co Ltd [1982] QB 133).*

This requires proof in the first place that:

The occupier made a mistake as to his legal rights; the occupier must have expended some money or must have done some act on the faith of his or her mistaken belief; the owner of the legal right, must know of the existence of his or her own right which is inconsistent with the right claimed by the occupier; the owner of the legal right, must know of the occupier's mistaken belief of his or her rights and must have encouraged the occupier in his or her expenditure of money or in the other acts which he or she has done, either directly or by abstaining from asserting his or her legal right.

The principle requires an approach which is directed at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to deny that which, knowingly or unknowingly, he or she has allowed or encouraged another to assume to his or her detriment (see **Willmott v. Barber (1880) 15 Ch D 96**).

If the legal owner stands by and allows the claimant to, for example, build on his or her land or improve his or her property in the mistaken belief that the claimant had acquired or would acquire rights in respect of that land or property then an estoppel will operate so as to prevent the legal owner insisting upon his strict legal rights.

Chabaz
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Equity comes in, true to form, to mitigate the rigours of strict law. It will prevent a person and successors from insisting on his/her strict rights, whether arising out under a contract or on his title deeds or by statute, when it would be inequitable to do so having regard to the dealings which have taken place between the parties. (*Ibaga vs Tarakpe Civil Appeal No. 0004 of 2017*).

In alignment with the above, the plaintiff did not therefore reveal to court the entire truth when he stated in *paragraph 10* of his statement that it was around November, 2017 that the defendants forcefully entered into his land taking over 0.25 decimals.

From his own evidence, by the time he acquired his title the decision had already been made with acquiescence of his predecessors in title to acquire part of that plot as a road. He had not been privy to that decision, had no interest at the time, and cannot claim any compensation in arrears so to say, in that respect.

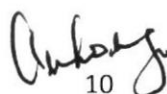
A breach of a contract refers to a situation where one party to a contract fails to carry out a term of the said contract. It occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. (*See: Ronald Kasibante vs. Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690*).

It follows therefore that when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy. The defendant in this regard failed to comply with the terms of the contract as contained in the disclosure form.

The alterations if any, which may have followed a review in the design with all due respect, required the two parties to enter into fresh terms with correct specifications of the area, which they never did. As pointed out in the submissions by his counsel, the plaintiff had already withdrawn his consent justifiably so, at the time when the works on the expansion commenced.

He could not be bound by any claims of changes in designs made by the defendant, which in any case were never duly communicated to him before taking over a sizeable portion of the land, and which over the time became a prime area for commercial and public use.

It is also the view firmly held by this court that the fact that the land had already been encumbered; that the defendant was merely exercising its statutory function of maintaining the public right of way; that after old alignment, the land was not commercially usable; or that the remaining portion could be utilized for any other purpose, were not helpful to the defence case.


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They were not determinants to the question whether or not the plaintiff is entitled to fair and adequate compensation prior to the acquisition. What was important was the obligation and duty to be observed by an entity intending to acquire any privately owned property and only acquire it after following the due processes of the law.

5 **Issue No. 2 :Remedies:**

The plaintiff in this suit seeks a permanent injunction restraining it from trespassing onto the suit land; or in the alternative compensation; general damages for trespass; costs of the suit; *mesne* profits.

General damages:

- 10 The law is that the claim for general damages must be proved. General damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim.

These follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as well as damages for paid loss and suffering. **See; Uganda**

- 15 ***Commercial Bank Vs Deo Kigozi [2002] EA 293.***


Black's Law Dictionary 9th Edn at page 445 defines *damages* as the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong. It is trite law that damages are the direct probable consequence off the act complained of. Ref: *Storms versus Hutchison (1905) AC 515.*

- 20 In the case of ***Assist (U) Ltd. versus Italian Asphalt and Haulage & Anor, HCCS No. 1291 of 1999 at 35*** it was held that *the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering*'.

- In alignment with the above authorities and principles a highlighted, the determination of the amount payable as general damages is left within the discretion of court. Based on the fact that
25 the plaintiff as the registered proprietor has had to forfeit the exclusive enjoyment and full utilization of the plot for years, the inconvenience suffered by him and damages caused entitle him to an award of **Ugx 50,000,000/=**, as general damages.

Mesne profits:

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


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

5 In the case of **George Kasedde Mukasa versus Emmanuel Wambedde & 4 Ors, High Court Civil Suit No. 459 of 1998, Mukiibi J.** stated that wrongful possession of the defendant is the very essence of a claim for *mesne* profits.

Damages by way of *mesne* profits are awarded in cases where the defendant has wrongfully withheld possession of the land from the plaintiff. (**Elliott versus Boynton [1924] 1 Ch. 236 [CA] Warrington, L.J, at page 250).**

10 In this case the defendant’s wrongful act of acquiring the land without the consent of the plaintiff and without prior compensation amounted to arbitrary exercise of its powers, which ultimately affected the plaintiff’s right to develop and enjoy the property, from 2016 to date.

15 As already declared by court, the plaintiff would have no cause of action against the defendant prior to 2016, and in respect of the existing road covering 0.12 acres that had been tarmacked in 1950.

He nevertheless had a cause of action for the portion of the land measuring 0.13 acres where the expansion was made, which could have been developed to fetch some decent income for the plaintiff.

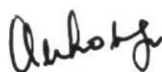
20 Since that no longer seems possible, I would apply court’s discretion to grant a sum of **Ugx 72,000,000/=** as *mesne* for the wrongful possession.

Compensation to the plaintiff:

Counsel for the plaintiff in his submissions made reference to the Supreme court decision **UNRA vs Irumba Asumani & Anor No. 2 SCCA** where it was held that **section 7 (1) of the Land Acquisition Act** was inconsistent with **article 26 of the Constitution**.

25 The section allows a person’s land to be taken by the Government before paying adequate compensation, and court while nullifying that section stated that it does not provide anywhere for prior payment of compensation before Government takes possession or acquisition.

30 The value attached to the property following the valuation is a sum of **Ugx 577, 000,000/=**. The estimated increase in value of 20% per annum was **Ugx 115,400,000/=**. Counsel in this case accordingly prayed for a sum of **Ugx 692, 400,000/=** as the current market value.



The defendant's counsel in submission however argued that **Pw4**, Mr. Boaz Tukahirwa, had testified that he had used the comparable transactions method by which the value of the suit land was arrived at by using information on transactions involving assets that are the same or similar to the subject asset. However that during cross examination he failed to identify similar property encumbered by road so as to come up with the value.

The best way in this court's view would have been for the defendant to challenge that report in terms of facts and figures presented through the Chief Government Valuer's office or other credible expert's report, which was not done.

On page 21, of the assessment report **PEXh 4**, the sum of **Ugx 577,000,000/=** was broken down as **Ugx 501,739,130/=** given as the value of the land; and **Ugx 75,260,870/=** as disturbance allowance.

The value of the old alignment which is **Ugx 40,869,565/=** must be deducted however from the total amount of **Ugx 501,739,130/=** based on the earlier findings of this court that the plaintiff's father had passively consented to the acquisition of the existing portion of the road at the time. He never raised any complaint against the defendant or the KCC at that time.

The value of the new alignment **Ugx 460,869,565/=** therefore remains the amount of compensation to which the plaintiff is entitled to. The valuer's claim that the value may have gone up by 20%, from the time the assessment was made, was not however backed up by any documentary evidence. This court also failed to establish how the figure of **Ugx 75,260,870/=** (calculated as 15% disturbance allowance) had been arrived at during the assessment.

The actual figure out of which the percentage was to be made was not provided for in the report; and no explanations could be found in substantiation of those calculations which means that both disturbance allowance and 20% estimated as the increase in value were premised on mere speculation.

Deduced from the contents of the report, it is clear that the interest held by the owner as the residue portion significantly reduced leaving approximately 0.10 decimals which can hardly be put to good economic use. This is supported by both the undisputed survey report and the valuation report (**PEXh 3 and PEXh4**).

The defendant did not only fail to lead any factual evidence to challenge the second assessment made by the said valuer, it also failed to provide proof on how the Chief Government valuer had in the first place arrived at the figures as originally spelt out in the disclosure form.


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Based on the findings of this court, the granting of the sum of **Ugx 460,869,565/=** as compensation for the unlawful acquisition of the plaintiff's land by the defendant, is justified.

In the final result, the plaintiff is entitled to the following reliefs:

1. **Compensatory award of Ugx 460,869,565/=;**
2. **General damages of Ugx 30,000,000/=;**
3. **Mesne profits of Ugx 72,000,000/=;**
4. **Interest at the prevailing commercial rate, payable for orders 1, 2 and 3 above, from the date of delivering this judgment, till payment is made in full;**
5. **Costs of this suit.**


Alexandra Nkonge Rugadya

Judge

12th January, 2023.

Delivered by email

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12/1/2023.

