

MISCELLANEOUS CAUSE NO.0330 OF 2023

UGANDA NATIONAL ROADS AUTHORITY :::::::::::::::::::::::::::::: RESPONDENT

RULING

iii) Costs be in the cause.

Background:

2. The applicant owns a Kibanja at Kalerwe Mulago II Parish, Kawempe Division Kampala District. In 2012 the respondent opted to widen the Wandegeya Kalerwe road which affected among others the applicant's Kibanja. In view of compensation, the respondent valued the applicants kibanja at UGX 119,154,737. Later on, some of the affected persons went to court in a dispute over the ownership of the land in dispute which case was determined by this honorable court. However, the applicant was not a party to said case. The respondent applied to court to have all total compensation sum deposited in court which sum was deposited inclusive of the applicant's compensation. The applicant has brought to the same court two applications which were determined by this court.

Applicant's evidence:

3. This application is supported by an affidavit deponed by **Mr. Donozio Musisi Sekyaaya** the applicant, which sets out the grounds of the application including the following;
 - i) That the applicant owned a Kibanja at Wandegeya-Kalerwe village Local Council 1, Mulago Parish Kawempe Division.
 - ii) That the applicant's Kibanja was affected by the respondent's road construction project which was valued at UGX. 119.154,737
 - iii) That the respondent was tasked to deposit the money due for compensation to all affected persons in court vide Civil suit No.342/2016 where the applicant wasn't a party.
 - iv) That the respondent deposited in court UGX.723,694,720(Seven hundred twenty-three million six hundred ninety-four thousand seven hundred and twenty shillings only)

which included the applicant's UGX.119.154,737(One hundred nineteen million one hundred fifty-four thousand seven hundred thirty-seven shillings only)

- v) That when the respondent was asked about the applicant's compensation, he responded that the applicant's compensation formed part of the total sum deposited in court by the respondent.

Respondent's evidence:

4. The application is opposed by an affidavit in reply deponed by *Aisia Suzanne Musooli* the Directorate of legal services of the respondent in which she stated the following among others;
 - i) That during the initial field survey exercise for expansion of the Northern bypass phase 2, land comprised in Kibuga Block 5 Plot 584 Land at Mulago was identified as part of the many plots of land to be affected by the road construction project.
 - ii) That the respondent deposited an approved compensation of UGX,723,694,720 in court for the land in issue pending determination of the rightful owners.
 - iii) That the said compensation sum was inclusive of values of both interests of the registered proprietors and the bibanja holders.
 - iv) That the compensation claimed by the applicant as a kibanja holder forms part of the compensation sum that was deposited in court
 - v) That the applicant filed an application to court vide Misc. Application No. 1552 of 2021 where Hon.Justice Henry Kaweesa directed that the applicant's compensation be paid to him out of the compensation sum.

Representation:

5. The applicant was represented by Mr. Kalule Fred of M/s Fred Kalule & Co. Advocates whereas the respondent was represented by Pacos Mutatin from UNRA, both parties filed their affidavits and the applicant filed his submissions which I have considered in the determination of this application.

Issues to be determined by court:

6. The main issue for determination is whether or not the applicant's compensatory sum of Ugshs.119,154,737 formed part of the sums of Ugshs.723,694,720 deposited in court by the respondent. This issue combines the two issues raised by the applicant in his submissions and resolving the same will have a great impact on the two issues

Resolution of the issue:

7. The applicant in his affidavit in support of the application under paragraph 3, states that his kibanja formed part of the land affected by the respondent's road construction project and that the same kibanja was valued at UGX.119.154,737 as per the valuation report annexed to the affidavit. Following various claims regarding the land that is to be affected due to the respondents road construction project, the respondent applied to court vide Miscellaneous Application No.1504 of 2017 arising from Civil Suit No.342 of 2016(which suit was brought by parties that were affected by the respondent's road construction project where the applicant was not among the parties) seeking to deposit the entire approved compensation of UGX.723.694,720 for the land in issue into court pending the determination of the rightful owners.

8. The said order was granted and the total compensatory sum of UGX.723.694,720 was deposited as per the court order and proof of payment adduced. Counsel for the applicant in his submission further stated that when the applicant demanded for his compensatory payment from the respondent, the respondent informed him that his money formed part of the total sum of UGX.723.694,720 deposited in court.
9. The respondent states in his affidavit in reply under paragraphs 6&7 that the said compensation sum was inclusive of values for both interests of the registered proprietors and the kibanja holders, he further states that he knows that the compensation claimed by the applicant as a kibanja holder forms part of the compensation sum that was deposited in court and he is to pursue his claim from court.
10. In the quest to pursue his claim, the applicant filed a Miscellaneous Application No.1552 of 2021 in this court arising from Civil Suit No.342 of 2016 before Justice Henry Kaweesa, where the learned trial judge directed that the applicant's compensation sum amounting to UGX 119.154,737 be paid to him out of the compensation sum deposited in court.
11. The applicant further filed another application in the same court before Justice Tadeo Asimwe claiming the same interest and the learned trial judge dismissed the application on grounds that he should pursue his kibanja interest in whatever way he pleases.

Determination of court.

12. I will begin with the question as to whether the applicant's compensation sum of UGX 119.154,737 formed part of the total compensation sum of UGX 723,694,720 deposited in court by the respondent, this is an aspect that is not disputed by the respondent as per the evidence before me and as per the previous rulings by the same court.

13. Any remedies and orders sought in this court by the same applicant have almost the same impact and enforceability like the orders in the previous actions, if this honorable court ventures to add its voice on the same matter, it would not have any impact on the rights of the applicant instead the applicant will still be left confused as from whom to claim from.
14. Be that as it may, this matter should be put to rest by an ordinary suit and sue all the relevant parties pursuant to Order 1 Rule 7 of the Civil Procedure Rules or as the applicant may deem fit so as court determines all the questions before it on their merit and where the parties will adduce evidence and establish their rights, the procedure adopted by the applicant is not the proper procedure to put this matter to bed, a number of issues have to be determined including the applicant's kibanja and where he should seek relevant compensation. (*See; Mugerwa Ahmed Kato & 4 others Vs Gemstone International limited and 4 others, Misc.Cause No.17/2018 before Hon.Justice Joseph Murangira*).
15. I'm of the view that the orders that shall be sought from such a suit shall be formidable, enforceable and impactful to all relevant parties, this application is not hinged on matters of law but rather judicial prudence
16. Filling court with more applications by the same applicant claiming under the same subject matter would amount to forum shopping tantamounting to the use of court process for an improper purpose thus abuse of court process. (*See; Male Mabirizi Kiwanuka Vs Attorney General, Misc.App. No. 89/2022 before Hon.Justice Boniface Wamala*)
17. Further this honorable court shall not proceed to keep on hearing the same party over the same subject matter under the same procedure yet the same can be put to rest by an ordinary suit.
18. The applicant further alleges that the respondent should confirm that he valued his kibanja and that the sum of UGX 119,154,737 was the total value for the same kibanja. This is not a fact

that is disputed by the respondent as per the survey report and valuation report adduced before court and this honorable court pronouncing itself about the same would not have any impact or change the gist of this application.

19. That being the case, the finding of this honorable court is that the approach employed by the applicant in bringing this application will not be the last nail in this matter, the rights of the applicant are to be satisfactorily determined through an ordinary suit.

20. Consequently, this application is found to lack merit and is dismissed accordingly with no costs to the respondent.

I SO ORDER



AISHA NALUZZE BATALA

JUDGE

25TH /09/2023.