THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

CIVIL SUIT NO. 250 OF 2011

KENNETH ROBERT BATARINGAYA :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ATTORNEY GENERAL:: DEFENDANT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

J U D G M E N T:

KENNETH ROBERT BATARINGAYA (hereinafter referred to as the "plaintiff") brought this suit against the Attorney general of the Republic of Uganda *(hereinafter referred to as the "defendant")* seeking the following reliefs;

(a) A declaration that during the subdivision of the plaintiff's land under the Government's Ankole Ranching Scheme Restructuring Policy, the defendant based herself on an erroneous deed print of LRV 1523 Folio 5, issued in 1986 measuring approximately 876 hectares and disregarding the total area of about 3000 acres comprised in the lease agreement of 26th June, 1968, between the plaintiff's predecessor in title and Uganda Land Commission.

(b) An order of the payment of adequate, fair and prompt compensation for 176.7 hectares that were erroneously included in the total appropriated land by the Government but for which no compensation has ever been paid.

(c) An order for payment of general damages, costs of the suit and interest on all pecuniary awards.

Background:

The plaintiff is son to the late Basil Kiiza Bataringaya and current administrator of his estate. Late Basil Kiiza Bataringaya was granted a lease on 26th June, 1968, by the Uganda Land Commission (ULC) for land that later came to be known as Ankole Ranching Scheme Ranch 13 measuring approximately 3000 acres. Upon the death of the administrator of the estate of Basil Kiiza Bataringaya, the plaintiff who is also a beneficiary, obtained letters of administration and was later registered as proprietor of the property.

The plaintiff thereafter, in the absence of the original lease of 26th June, 1968, procured his registration on the above land and was issued a certificate of title in 1986 relating to the above land comprised in LRV 1523, Plot 2 Nyabushozi Block 110 measuring approximately 876 hectares. As a result of Government policy of reducing the size of ranches so as to give land to landless people, the plaintiff's Ranch 13 was among those affected by the restructuring. It was surveyed and apportioned between the registered owner and the Government.

During the above process, unknown to the plaintiff, he surrendered the certificate of title issued to him in 1986 as described above for compensation purposes without regard to the original 1968 lease between his predecessor in title and ULC as he was not in possession of the same. It was not until when the plaintiff had got possession of the earlier lease agreement of 1968 and after opening up of boundaries in 2003 that it was discovered that the survey deed print for Ankole Ranching Scheme Ranch 13 comprised in LRV1523 Folio 5 of 1986, differed in measurement from the original issued by the ULC in 1968.

A resurvey was conducted under *1/S No. Mm 1060* and approved by the Commissioner of Lands & Survey on 13th January, 2005 and it was established that Ankole Ranching Scheme Ranch 13 was 1052.7 hectares and not 876 hectares as was erroneously shown in LRV 1523 Folio 5 issued in 1986.

During the Government policy of restructuring ranches, subdivision of the plaintiff's Ranch 13 was based on the erroneous measurement resulting into Ankole Ranching Scheme Ranch 13A measuring 259 hectares and Ankole Ranching Scheme Ranch 13B measuring 617 hectares leaving a short fall of 176.7 hectares unaccounted for. Based on this erroneous subdivision the plaintiff was compensated for only the 617 hectares out of 793.7 hectares appropriated by Government leaving a shortfall of 187.7 hectares that was taken over by Government but was neither accounted for nor compensated.

The plaintiff brought this anomaly to the attention of the relevant Government officials and sought to be compensated for the 176.7 hectares which was neither accounted for nor compensated but which was taken over by Government. After a period of five years of moving back and forth, it dawned on the plaintiff that the defendant had no intention of compensating him, hence he filed this suit seeking the remedies outlined above.

As already indicated, the plaintiff sought for orders of compensation for the 176.7 hectares, general damages, interest and costs of the suit. On the 24th of September, 2014, the suit was partially settled between the parties and a consent judgment entered based on admission by the Government where by the defendant acknowledged that there was indeed a shortfall of 176.7 hectares when the plaintiff was being compensated for Ranch 13B, and that the plaintiff lost a total of 793.7 hectares to the Government.

Court directed that valuation be carried out, and the Chief Government Valuer confirmed that the plaintiff was entitled to compensation worth UShs.1,857,860,650/= *(One Billion Eight Hundred Fifty Seven Million Eight Hundred Sixty Thousand Six Hundred Fifty only)* for the shortfall of 176.7 hectares lost by the plaintiff to Government. The plaintiff has, however, not been paid that money up to now.

The issue of general damages, interest, and costs of the suit remained outstanding pending proof of the same by the plaintiff and determination by court. The plaintiff adduced evidence in that regard. The plaintiff was represented by Mr. David Sempala of *M/s.KSMO Advocates* while the defendant was represented by various State Attorneys in the Chambers of defendants at different times. Counsel for the parties filed written submissions. I will not reproduce them in detail in this judgment but I have however taken them into account in arriving at a decision in this judgment.

Resolution of the outstanding issues:

(a).Whether the plaintiff is entitled to general damages:

In the case of ***Emmanuel Turyamuhika Kikoni vs. Uganda electricity Board, HCCS No. 05-0021-2004***, which was cited with approval in the case of ***Mohanlal Kakubhai vs. Warid Telecom Uganda HCCS No. 224 of 2011,*** it was held that the damages were awarded as recompense. Further citing with approval the English case of ***British Transport Commission vs. Gourley [1956] AC 185 at page 197***, the court held that,

> ***"…..the broad general principle which should govern the assessment of damages is that the tribunal should award such a sum of money as will put the injured party in the same position as he would have been if he has not sustained the injuries."***

It has also been held that the award of general damages is in the discretion of court and always as the law presumes to be the natural and probable consequence of the defendant's act or omission. *See:* ***James Fredrick Nsubuga vs. Attorney General, H.C.C.S No. 13 of 1993' Erukan Kuwe vs. Isaac Patrick Matovu & A'nor H.C.C.S No. 177 of 2003 per Tuhaise J.***

In the instant case, the plaintiff adduced evidence, at paragraph 16 of the witness statement, that he has for a long time tried to claim compensation for the above stated unaccounted for and uncompensated for land from the Ministry of Lands, Housing and Urban Development, but to no

avail. He further stated that he has had several communications with the said Ministry as well as paid numerous visits which have also yielded nothing. That it was not until 2014 when the Government, through the Permanent Secretary, Ministry of Lands, signed off the letter admitting to the technical error on the part of Government of a shortfall of the 176.7 hectares.

It is noted from the plaintiff's pleadings that several of the attached correspondences with the Ministry that predate the filing of this suit. For instance, the plaintiff wrote to the Permanent Secretary, Ministry of Lands on the 24th of February, 2010, to which he got a response on 23rd June, 2010, rejecting the proposition that there had been a shortfall in compensation. The plaintiff yet again wrote to the defendant on 10th June, 2011, clearly restating and showing the balance of 176.7 hectares that had not been compensated for after the ranches restructuring exercise by the Government.

By simple computation, it is evident that this was inordinately too long a period from when the land was taken over in 1995 as per *Annexture "E"* to the plaintiff's witness statement, up to 2014 when the defendant eventually admitted that indeed it had taken excess land of the plaintiff measuring 176.7 hectares. There is no doubt that the plaintiff was for all that period of almost twenty years denied use of that huge chunk of land without compensation. Many possibilities abound that had the plaintiff been using his land from then to date, he would most have derived enormous financial and economic benefits.

Therefore, the plaintiff certainly suffered great loss and damage; the denial of which ought to be fairly and reasonably commensurate to and reflective of the recompense he ought to receive from Government. Court finds that the plaintiff was subjected to enormous economic inconvenience and loss at the behest of the defendant's initial denial, intransigence and unresponsiveness to his plight. This entitles him to the award of general damages.

The next issue is in respect to the quantum of the general damages that should be awarded. In ***Taikiya Kashwahiri & A'nor vs. Kajungu Denis, CACA No. 85 of 2011***, it was held, inter alia, that general damages should be compensatory in nature in that they should restore some satisfaction, as far as money can do it, to the injured plaintiff. Further, in arriving at the quantum of damages, courts are usually guided by the value of the subject matter, the economic or other inconveniences that a plaintiff has been put through at the behest of the defendant and the nature and extent of the damage or loss suffered. A plaintiff who suffers damage due to the wrongful act or omission of the defendant should bet be put in the position he or she would have been if he or she had not suffered the loss or injury. See: ***Uganda Commercial Bank vs. Kigozi [2002] 1 EA. 305***; ***Charles Acire vs. Myaana Engola, HCCS No. 143 of 1993; Kibimba Rice Ltd. vs. Umar Salim, SCCA No.17 of 1992.***

I must emphasise, though, that damage is not measured in a similar way as loss due to personal injury. Rather, it is done by usually looking into the future so as to forecast what would have been likely to happen if the damage or loss had never occurred, and contrast it with the position as it is now as a result of the damage or loss. The future may necessarily be problematic and can only be a rough and ready estimate, but it must be done as the basis in assessing the loss.

From the unchallenged evidence adduced by the plaintiff, it is clear enough that the plaintiff lost enormously due to the anomaly made by the Government. Court therefore considers the fact that if the correct assessment had been done in 1995 when the title for the suit land was surrendered to the Ranch Restructuring Board, the plaintiff would have received his compensation currently established to be a figure of Shs. 2,857,860,650/= . It is by no means a small figure out of which the plaintiff would have reaped enormous economic and financial benefits

The other observation is that the plaintiff has suffered loss of business income as he was neither accessing his land for all that period of over twenty years nor was he compensated for the loss of the property. This too would have a strong bearing on the quantum of damages so as to restore him in a place he would have been financially. This must particularly be viewed against the background of the provisions of ***Article 26 (2) (b) (ii) of the Constitution,*** that a person shall not be deprived of his property unless there is fair, prompt and adequate compensation prior to the compulsory acquisition of the land.

Another consideration would be that the land in issue is in excess of half a square mile. This is quite substantial chunk of land to a rancher, such as the plaintiff, to be denied access of without accessioning to him enormous loss. Thus the basis of the quantum ought to be, among others, on the values supplied by the Chief Government Valuer when assessing compensation for the shortfall due to the plaintiff for the land which was put at Shs.1,857,860,650/=. This is quite a substantial amount which if it had been paid earlier would have boosted the economic and financial fortunes of the plaintiff to a great extent.

There is also another factor that the defendant's compulsory acquisition of the plaintiff's was inherently unlawful in so far as it was done without prior adequate compensation as required by the Constitution. To put it mildly this amounted to impunity mated out by the defendant on a citizen whose wellbeing and property the Government is legally and constitutionally duty bound to protect.

The actions of the defendant basically had negative economic and financial repercussions of great proportion to the plaintiff. The defendant's conduct was wanton and in utter disregard of the law of which the same Government is the main custodian. Courts of law frown on such impunity and express their disapproval by imposing punitive and exemplary damages.

Katureeba, JSC, as he then was, in his paper ***Principles Governing the Award of Damages in Civil Cases*** had this to say;

> ***"in an action where an outrage has been committed against the plaintiff by the defendant and the court forms the opinion that it should give punitive damages to register its disapproval of the wanton and willful disregard of the law, it is entirely proper to award exemplary damages in addition to general damages and special damages, if any."***

This is of course not to mention the physical and physiological stress all this has exerted on the plaintiff; a very busy business man and farmer, who on many occasions had to leave his business to attend court in furtherance of his claim.

Finally, the decision on quantum of damages is informed by other decided cases of a similar nature with losses in close proximity to the instant case. These include the case of ***Mohanlal Kakubhai vs. Warid Telecom Uganda HCCS No. 224 of 2011*** in which court awarded general damages of UShs.1,000,000,000/= for trespass to land; ***Annet Zimbiha vs. Attorney General HCCS No.109 of 2011*** where Shs. 350 million was awarded as general damages on the amount of compensation of Shs 3billion for land also compulsorily acquired by Government without prior compensation to the plaintiff; among many others. All factors and circumstances of this case taken together, court considers the amount of Shs. 1,000,000,000 [One Billion Only] to be fair and adequate general damages and award the same to the plaintiff.

(b) Whether the plaintiff is entitled to interest on damages:

The guiding principle is that interest is awarded in the discretion of court, but like all discretion it must be exercised judicially taking into account all circumstances of the case. See***: Uganda Revenue Authority vs. Stephen Mbosi, SCCA No. 26***

of 1995; Liska Ltd. vs. DeAngelis [1969] E.A 06; National Pharmacy Ltd vs. Kampala City Council [1979] HCB 256. Section 26CPA also gives discretion to court to award interest that is just and reasonable.

In the ***Annet Zimbiha vs. Attorney General Case (supra)*** this court had occasion to hold, inter alia, that;

> ***"A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him of her against the any economic vagaries of inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due."***

This court has not departed from that position and would award a similar rate of interest at 25% per annum applicable to the amount of general damages and punitive and exemplary damages. The amount of compensation as valued by the Chief Government Valuer and as agreed in the consent judgment of the parties shall, however, attract a rate of interest at court rate of 8% per annum from the date of the consent until payment in full.

(c) Whether the plaintiff is entitled to costs of the suit:_

The established position of the law, under ***Section 27(2) CPA*** is that costs are awarded in the discretion of court and shall follow the event unless for some good reasons the court directs otherwise. See: Jennifer ***Rwanyindo Aurelia & A'nor vs. School Outfitters (U) Ltd., CACA No. 53 of 1999, National Pharmacy Ltd vs. Kampala City Council [1979] HCB 25.*** In the instant case, the plaintiff having succeeded in the entire case is awarded costs of the suit. Accordingly, it is hereby ordered as follows;

(a) The plaintiff is awarded general damages of Shs. 1,000,000,000 (One Billion Only).

(b) The plaintiff is awarded punitive and exemplary damages of Shs. 250, 000,000 (Two Hundred and Fifty Million Only).

(c) The amounts in (a) and (b) shall attract interest at rate of 25% per annum from the date of this judgment until payment in full.

(d) The amount of compensation in the consent judgment of the parties shall attract interest at a court rate of 8% per annum from the date of the consent judgment until payment in full.

(e) The plaintiff is awarded costs of the suit.

BASHAIJA K. ANDREW
JUDGE
25/08/2015