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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 724 OF 2003

THE LAW DEVELOPMENT CENTRE :::::::::::::::::::: PLAINTIFF

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VERSUS

DAN WASSWA SERUFUSA:::::::::::::::::: DEFENDANT

BEFORE: THE HON MR. BASHAIJA K. ANDREW

JUDGMENT

The Law Development Centre (LDC) (*hereinafter referred to as the “plaintiff”*) filed this suit
 15 against Dan Wasswa Serufusa (*hereinafter referred to as the “defendant”*) seeking a declaration
 that the plaintiff is the owner of the suit land comprised in Block 9 Plot 222 Makerere
 (*hereinafter referred to as the “suit land”*); an order directing the Registrar of Titles to cancel
 the defendant’s name in the certificate of title for the suit land and to register the plaintiff as
 proprietor thereof; a permanent injunction restraining the defendant, his servants, or any other
 20 person acting on his behalf from trespassing upon or carrying out any construction or
 development of any nature in the suit property, general damages, interest, and costs of the suit.

Background:

The plaintiff is an educational institution. It was established by an Act of Parliament, the Law
 Development Centre Act, Cap.132. It is a body corporate with perpetual succession, and may sue
 25 or be sued in its corporate name. It was established for the functions, inter alia, of carrying out
 legal education and training in Uganda. The then Minister of Lands, Housing & Surveys

exercising powers conferred by subsection (1) of Section 2 and Section 7 of the Land Acquisition Act, 1965; and pursuant to the Land Acquisition (Makerere) Instrument, 1987 S.I No. 74 of 1987, declared land measuring approximately 4.05 hectares in Kyadondo, Mengo, 30 comprised in Plots Nos. 34, 89, 154-166, 170, 221-222, 245, 450-451, 464-467, 481-482, 507-508, and 510-511 to be land required by Government for a public use. The suit land comprised in Block 9 Plot 222 measuring 0.28 acres which belonged to the defendant was also part of the land compulsorily acquired by Government for the said plaintiff's public purpose. The plaintiff was, in June, 2003 issued with a 99-year lease on the suit land now comprised in LRV 3112 Folio 7.

35 Initially, the suit land belonged to late Yokana Lwanga the grandfather to the defendant. Late Yokana Lwanga had a certificate of title for the suit land issued in February, 1955. Thereafter, the title it was transferred to the Administrator General in August, 2002 following death of Yokana Lwanga, and thereafter to the defendant. The defendant has never been notified of any acquisition by Government or compensated for the suit land.

40 In November, 2005 the plaintiff sued the defendant. Pending the final determination of the suit, the plaintiff also obtained an order of a temporary injunction restraining the defendant from developing the suit land. The suit land thus remains undeveloped to date. The Chief Government Valuer valued the suit land together with the development thereon at Shs. 579,600,000/= and made a report to that effect dated 22nd January, 2013.

45 At the commencement of hearing of the suit, the plaintiff made an *ex parte* application for a Third Party Notice to be issued against the Attorney General as a necessary party to the suit for purposes of indemnifying or otherwise contributing to the liability that may be imposed on the plaintiff in the event that judgment was entered against the plaintiff for compensation. The

application was granted and the Attorney General served with summons to file a defence. On
50 numerous occasions, however, the Attorney General failed to file a defence despite being duly
served. A default judgment was accordingly entered against the Attorney General. Pursuant to
Order 12 CPR, the parties filed a joint scheduling memorandum. They adduced evidence by
filing witness statements to prove their respective claim and defence. The parties were also
advised by court to explore possibilities of settlement of the case. The parties agreed and came
55 up with a settlement particularly on the compensation amount, and costs. However, while they
agreed that the defendant was entitled to general damages, they could not agree on the quantum
and asked court to determine the same which was, at any rate, the only outstanding issue. The
parties adduced evidence in respect of that particular issue. Their lawyers also made submissions
which I summarize below.

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Submissions:

Mr. George Omunyokol, learned counsel for the plaintiff, submitted that it was agreed that in
light of the fact that the Attorney General against whom a default judgment was entered; should
pay the compensation due to the plaintiff as the value of the suit land. Further, that the value
65 should be paid on the basis of the valuation report by the Chief Government Valuer for the suit
land and developments thereon at Shs.579,600,000/=. Mr. Omunyokol submitted that under
Section 6 (4) of the Land Acquisition Act (supra) it is a responsibility of the Government to pay
compensation to persons whose lands have been compulsory acquired under the Act, and that in
this case the suit land was compulsory acquired by Government pursuant to the Land Acquisition
70 (Makerere) Instrument, S.I 74 of 1987.

Mr. Omunyokol also submitted that upon payment by Government of the value of the suit land in accordance with the Chief Government Valuer's report, the defendant shall surrender his certificate of title to the Chief Registrar of Titles, who by order of court shall cancel the name of the defendant thereon upon confirmation of receipt of the amount stated in the Chief Government
75 Valuer's report.

Mr. Omunyokol, however, opined that the particular issue of the quantum of general damages that was not agreed upon by the parties should be left to the court to exercise its discretion. Counsel was of the view that the defendant's proposal of Shs. 450,000,000/= as general damages is on the high side considering the fact that it is the tax payer's money is involved. Counsel
80 instead proposed Shs. 50,000,000/= as the appropriate quantum given the time taken by Government to conclude the compulsory acquisition process.

Mr. Omunyokol also opposed the defendant's proposal of 25% interest on the amount of the value of the suit land and general damages from the date of filing as being on the high side. Counsel instead proposed an interest rate of 8% from the date of judgment until payment in full.
85 He submitted that costs should be paid by the Government to the defendant after taxation by court. Mr. Omunyokol argued that given that the plaintiff is still in possession of the suit land by virtue of the temporary injunction order, the plaintiff should continue to be in possession pending implementation of the areas agreed, and the defendant would relinquish the title of the suit land to the Registrar of Titles for appropriate cancellation.

90 In reply, Ms. Rebecca Mutumba of M/s. Mutumba & Co. Advocates, learned counsel for the defendant, submitted that the sum of Shs.579,600,000/= as compensation for the value of the suit

land was acceptable as it was consented upon by the parties as payable by the Government to the defendant based on the value assigned by the Chief Government Valuer.

Regarding general damages, counsel submitted that the defendant proposed a sum of
95 Shs.450,000,000/= since he had been deprived of the use of the suit land for the last 12 years.
Further, that the figure took into account the fact that the defendant had already paid all the
squatters on the suit land to the tune of Shs.25,000,000/=, and graded the suit land, and that he
was going to construct a hostel and restaurant that would fetch him a sum of money per year of
approximately Shs. 41,000,000/= given Shs. 450,000,000/= as the total for the last 12 years. Ms.
100 Mutumba also submitted that it is agreed that the defendant shall file a bill of costs to be taxed,
and that it shall be paid by the Government.

On the issue of interest, counsel submitted that the defendant proposed an interest rate of 25%
per annum from the date of filing of the suit until payment in full on all categories of payment.
That the defendant had acquired a loan which he had to pay at a commercial rate.

105 The following are the issues for determination;

1. *What is the appropriate quantum of damages?*
2. *What is the applicable rate of interest?*
3. *Whether the defendant is entitled to costs.*

I will resolve the issues the same order and headings.

110 ***Resolution of the issues;***

Issue No.1: What is the appropriate quantum of damages?

The position of the law was restated in the case of *Storms vs. Hutchison (1905) AC 515; Kampala District Land Board & George Mitala vs. Venansio Babweyana Civil Appeal No. 2 of 2007*; that damages are the direct probable consequences of the act complained of. It may be a
115 consequence due to loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. The test for the measure of damages was well stated in *Assist (U) Ltd vs. Italian Asphalt & Haulage & another HCCS No. 1291 of 1999* at page 35, that a party who suffers damage due to the wrongful act of another must be put in the position he or she would have been had he or she not suffered the loss or injury. In arriving at the quantum of damages, court is
120 guided by the principle enunciated in the cases of *Kibimba Rice Ltd. vs. Umar Salim, SCCA No.17 of 1992*; and *Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305*; that regard should be had of factors such as the economic/financial value of the subject matter, the inconvenience that a party was put through and the nature and extent of the injury or loss suffered.

It was also held in *Takiya Kashwahi & A' nor v. Kajungu Denis, CACA No. 85 of 2011*, that
125 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.

Applying the principles stated in the above decided case to facts of the instant case, the unrebutted evidence of the defendant clearly demonstrates that Government compulsorily acquired his for the plaintiff's public purposes and leased the same to the plaintiff for 99 years.
130 This was after the defendant had duly compensated all the squatters who were settled on the suit land, and graded the same in order to develop it into a hostel complex for students. The plaintiff filed the instant suit and obtained an order of a temporary injunction against the defendant restraining him from developing the suit land until final determination of the suit. This evidently occasioned economic and financial loss to the defendant.

135 Further related to the above latter, the defendant adduced evidence that he lost great economic opportunity of developing his land. He had planned to construct a hostel which no doubt given the location of the suit land would earn him substantial amount of money in rent. The compulsory acquisition of the suit land by Government for the public purpose of the plaintiff essentially had a ripple effect of negative economic and financial proportions on the defendant.

140 This is of course not to mention of the physical and psychological stress exerted on the defendant who as a businessman who ordinarily thrives primarily on business. This entitles that defendant to general damages commensurate to the damage and loss suffered. The plaintiff suggested Shs.50 million while the defendant proposed Shs. 500,000,000/= as general damages.

I find that the claim of Shs. 450,000,000/= by the defendant is backed by concrete evidence as
145 opposed to the proposal of the plaintiff which was mainly premised on the argument the tax payer's money is involved in payment of the value of the suit land and general damages. Court takes into account the unrebutted evidence of the defendant that he had already paid all the squatters on the suit land to the tune of Shs.25, 000,000/=. Further, he had graded the suit land, and that he was going to construct a hostel and restaurant that would fetch him a sum of money
150 per year of approximately Shs.41,000,000/=. The suit land is located in a commercial-cum-institutional zone and is mainly surrounded by hostels and the Law Development Centre.

I have also taken into account the fact that the defendant who is the registered owner has not been using the suit land for over the last 12 years now owing to the order of temporary injunction against him that was issued at the instance of the plaintiff. Considering that the measure of
155 damages is that sum of money which ought to put the party who has been injured, or who has suffered loss in the same position as he would have been if he had not sustained the loss, Shs.

500,000,000/= would be a fair and adequate recompense and I award the same amount as general damages to the defendant.

Issue No.2: What is the appropriate rate of interest?

160 Section 26 (2) CPA provides for the award of interest and states as follows;

“Where and in so far as a decree is for payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

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In the case of *Uganda Revenue Authority vs. Wanume David Kitamirike CACA No. 43 of 2010*, Kasule JA in his judgment observed that while section 26 (2) of the Civil Procedure Act gives court discretion to award interest adjudged on the principal sum from any period prior to the institution of the suit, or from the date of filing the suit to the date of the decree, or on the aggregate sum adjudged from date of decree to date of payment in full, and the burden is on the party claiming interest to plead and adduce some evidence entitling that party to interest. Also, Lord Denning in the case of *Hambutt’s Plasticine Ltd. vs. Wayne Tank & Pump Co. Ltd* [1970]1 QB 447 held that;

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“An award of interest is discretionary. It seems to me that the basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly.”

In the instant case, the defendant prayed for an interest of 25% on the value of the land and
180 general damages from the date of filing the suit till payment in full. Much as the defendant has
suffered a great economic loss and inconvenience as a result of the compulsory acquisition of the
suit land by Governments without prior compensation, an interest rate of 25% from the time of
filing the suit until payment in full would be excessive. Court finds reasonable an interest rate of
8% per annum on both the sum awarded as the value of the suit land rate from the date of filing
185 the suit till payment in full and on general damages from the date of filing until payment in full.

Issue No.3: Whether the defendant is entitled to costs.

Section 27(2) CPA (supra) provides that costs are awarded in the discretion of court but shall
follow the event unless for e good reasons the court directs otherwise. See also: ***Jennifer
Rwanyindo Aurelia &A ‘nor vs. School Outfitters (U) Ltd., CACA No.53 of 1999; National
190 Pharmacy Ltd. vs. Kampala City Council [1979] HCB 25.*** In the instant case, the defendant has
ably demonstrated that he suffered loss at the instance of the Government which compulsorily
acquired his land without prior compensation. Article 26 (2) (i) of the Constitution 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—
195 (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 a law
which makes provision for—
(i) prompt payment of fair and adequate compensation, prior to the taking of
200 possession or acquisition of the property;...”*** (Underlined for emphasis)

In light of the above Constitutional requirement which was never complied with prior to the compulsory acquisition by Government; also given that it was the plaintiff for whose public purpose the suit land was compulsorily acquired that dragged the defendant to court even when provisions of Article 26 (2) (i) (supra) had clearly not been complied with, that constitutes a strong basis to entitle the defendant to of costs of this suit, which I award to him to be paid by Government. Accordingly, it hereby ordered as follows;

1. *The defendant is awarded Shs.579, 600,000/= being value of the suit land.*
2. *The defendant is awarded Shs.500, 000,000 /= as general damages.*
3. *The amount in (1) shall attract an interest rate of 8% per annum from the date of filing until payment in full.*
4. *The amount in (2) above shall attract an interest rate of 8% per annum from the date of judgment until payment in full.*
5. *The defendant is awarded costs of this suit.*
6. *The defendant shall surrender the certificate of title for the suit land to the Chief Registrar of Titles for cancellation upon the Government paying the sums in (1) and (2) and (5) above plus interest as ordered in (3) and (4) above.*

BASHAIJA K. ANDREW

JUDGE

04/11/2016