THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
MISCELLANEOUS CAUSE NO 25 OF 2022

HENRY MUGANWA KAJURA
(Suing through his lawful attorney REGINA KAJURA)::::::::::APPLICANT

VERSUS

1. UGANDA LAND COMMISSION
2. THE ATTORNEY GENERAL::RESPONDENTS

Before: The Hon. Mr. Justice Byaruhanga Jesse Rugyema

RULING

[1] The Applicant brought this application by Notice of Motion under **Article 26 (b)(i), 44 of the Constitution of the Republic of Uganda as amended, Section 98 of the Civil Procedure Act cap 71, Section 33 of the Judicature Act Cap 13 and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1** seeking for orders that:

a) The Respondents pay the Applicant a sum of **UGX 12,000,000,000/= (Twelve Billion Uganda Shillings only)** being compensation for the Applicant's land comprised in **LRV 2836 FOLIO 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares.**

b) Provision is made for the costs of this application.

[2] The grounds of the application are laid out in the Notice of Motion and in an affidavit sworn in support of the Application by **Regina Kajura,** the lawful attorney of the Applicant. The Application is opposed by the 2nd Respondent through an affidavit in reply filed on record dated 19/9/2022. The 1st Respondent did not file an affidavit in reply.

Counsel Legal Representation

[3] The Applicant was represented by **Counsel Simon Kasangaki** of **M/s Kasangaki & Co. Advocates, Masindi** and the Respondents were represented by **State Attorney Acol Ambrose** from the **Attorney General's Chambers.**

Background

[4] The gist of the matter is that the Applicant is the registered owner of land comprised in **LRV 2836 Folio 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** which is occupied by squatters whom he allege illegally accessed the land starting from the 1986 liberation struggle and is developed by the agents of the 2nd Respondent with permanent establishments like **Schools, a Health Centre III and sub county Administration offices**. The Applicant applied for compensation for his land under the **Land Fund** managed by the 1st Respondent.

[5] The Applicant who has been a Senior Government official and politician approached the head of state on the predicament of his delayed payment of compensation for his land and his Excellency, the President of the Republic of Uganda wrote to the Chairperson Uganda Land Commission, directing for immediate processing of his compensation payment by a letter dated **31.3.2021.** Triggered by the President's letter, the Permanent Secretary wrote to the Solicitor General on **10.5.2021** indicating the Ministry's undertaking to survey and value the Applicant's land to compensate him. The Permanent Secretary also wrote to the Chief Administrative Officer, Masindi District on **27.4.2021** indicating that a team of valuers and surveyors from the Ministry of Lands, Housing and Urban Development would travel to Masindi District to survey and value the Applicant's land in an exercise meant to compensate the Applicant for his land. To date, no Valuation Report has been availed resulting from the directives of the Permanent Secretary, Ministry of lands, Housing & Urban Development.

[6] Earlier on, the Applicant was sued by squatters vide **Masindi High Court Civil Suit No 64 of 2018** and in the pursuit of his compensation from the Respondents, the Applicant claim that he was advised by the Respondent's officials to settle the suit to pave way for easy processing of his compensation which he did. Despite this settlement, he was not paid his due compensation as promised by the Respondent's agents.

[7] It was the Applicant's further assertion that he did not access the Valuation Report from the Respondents valuers which prompted him to retain private valuers to wit **M/s Katuramu & Company consulting Surveyors** who assessed his property at **UGX 12,000,000,000/= (Twelve Billion Uganda Shillings Only)** and instituted these proceedings to recover a sum of **UGX 12,000,000,000/=(Twelve Billion Uganda Shillings Only)** being the fair current market value of his property

comprised in **LRV 2836 Folio 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** which has been taken over by squatters at the behest of the Respondents .

Failure by the 1st Respondent to file an affidavit in reply.

[8] The 1st Respondent as stated earlier did not contest the Application. Only the 2nd Respondent filed an affidavit in reply on **20.9.2022.** The law is settled. In the case of **Samwiri Mussa Vs Rose Achen; (Civil Appeal N0. 3 of 1976) 1978 HCB 297**, Ntabgoba Ag. J. (as he then was), held that

> *''Where certain facts are sworn to in an affidavit, the burden to deny them is on the other party and if he does not they are presumed to have been accepted and the deponent need not raise them again but if they are disputed then he has to defend them''.*

The application thus stands uncontested by the 1st Respondent.

Preliminary Objections

[9] The Respondent's counsel as can be gathered from his submissions raised three preliminary points of law. **Firstly,** that the Application was wrongly filed by **Mrs. Regina Kajura** acting outside the powers of attorney on record dated 14.7.2021, **Secondly,** that the Application does not disclose a cause of action against the Respondents and **Thirdly,** that the Applicant's cause of action arose in 1986 and is therefore time barred. I will resolve the preliminary objections first.

a)Whether the Applicant's Attorney acted outside her powers to institute this application.

[10] The parties filed written submissions in which the preliminary objections were incorporated. According to the 2nd Respondent, the donee of the Power of Attorney did not have authority to file the current application because the Powers of Attorney did not authorize her to sue. It was argued for the Respondents that the Attorney is acting outside the scope of the Power of Attorney granted to her. The power of attorney only related to **Masindi High court Civil Suit No. 64 of 2018 (Rwoojo Stephen & 21 others Vs Henry Muganwa Kajura)** and did not convey an express power to the donee to sue and/or file the instant application. The 2nd Respondent relied on the case of **Gold Trust Bank (U) Ltd Vs Josephine Zalwango Nsimbe, Executrix of the Estate of Sam Nsimbe (now deceased), High Court Civil Suit no 226 of 1992**. The 2nd Respondent

also cited the case of **Fredrick J.K Zaabwe Vs Orient Bank & Another SCCA No.04 of 2006** for the position of law that a power of attorney should be construed strictly.

[11] Learned counsel for the Applicant did not agree with the objections raised by counsel for the Respondents. He contended that the instant application was filed by the donor in his name through his wife who is his agent and further that it is not true that the donee filed the Application outside her mandate.

Black's Law Dictionary which defines a power of attorney to be;

> *"an instrument in writing whereby one person as principal appoints another as his agent and confers authority to perform certain acts or kinds of acts on behalf of the principal; …an instrument authorizing another to act as one's agent or attorney; …such power may be either general (full) or special (limited)".*

In the case of **Kajubi Vs Kayanja [1967] EA page 301** court was of the opinion that

> *''the power of attorney held by the Respondent did not authorize him to institute proceedings in his personal name and capacity; and his doing so made the proceedings fundamentally and incurably irregular…''*

[12] In the instant matter, the donee **Mrs. Regina Kajura** did not institute the current application in her personal name and/or capacity which would be fundamentally irregular and procedurally improper.

[13] I am persuaded by the arguments and reasoning of learned counsel for the Applicant that the instant application was rightly commenced by **Henry Muganwa Kajura** through his wife **Mrs. Regina Kajura** his lawful attorney. The matter was not instituted in the donee's own name but in the name of the donor suing through his wife as his agent. It is apparent that the Application was instituted by the Donor, in his name and for the Donor's benefit. The institution of the application is not for the benefit of the donee to the prejudice of the donor which the law and rules of construction of powers of attorney prohibit.

[14] In **Fredrick JK Zaabwe Vs Orient Bank & 4 others, S.C.C.A No. 4 of 2006** court held that:

''The point to note here is that the donee of a power of attorney acts as an agent of the donor, and for the donor''

See **Damiano Ssekiziyivu Vs Banyonyi Finance & investment Co Ltd & 12 others, H.C.C.S No. 108 of 2011[2015] UGCommC 121.**

[15] It is not contested that the powers of attorney on record authorized the donee to defend and represent the donor in **Masindi High Court Civil Suit No. 64 of 2018 (Rwoojo Stephen & 21 others Vs Henry Muganwa Kajura)** which related to the land the subject of the instant application comprised in **LRV 2836 FOLIO 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares.** The suit was settled by consent.

[16] The consent was crafted *inter alia,* on terms that the Respondents should pay compensation to the Applicant. This application was obviously instituted to recover the said compensation. One can easily relate that the institution of the instant application was a continuation of the enforcement of the Applicant's right to property which he appointed his wife to defend in the power of attorney dated **14.7.2021.**

[17] It is the finding of this court that the institution of the instant matter through the donee of powers of Attorney was not outside the power of attorney dated **14.7.2021** and non-fatal. Besides, as rightly argued by counsel for the Applicant, the power to defend a suit should be construed to include the power to counter claim and/ or institute a cross action for the benefit of the donor. This is what exactly happened in the present matter.

[18] This court would take as acceptable, the view by the Applicant that this application is incidental to the Powers of Attorney granted to the Attorney to defend his right to property in **Civil Suit No. 0064 of 2018 (Rwoojo Stephen & 21 others v Henry Muganwa Kajura)** and /or for the purpose of enforcing or realizing the consent settlement rights of the Applicant. The actions of the donee herein are in line with the precedents of **Midland Bank Limited v Reckitt (1933) AC 1 at 16, cited with approval in Gold Trust Bank (U) Ltd (Now DFCU Bank Ltd) Vs Josephine Zalwango Nsimbe, Administratrix of the estate of the estate of Sam Nsimbe Civil Suit No 226 of 1992** wherein it was held that incidental powers necessary to carry out the authority in the power of attorney will be implied.

[19] In the present case, the institution of this suit to recover compensation from the Respondents for the suit land as agreed in the consent settlement in **Masindi High Court Civil Suit No. 64 of 2018** squarely falls within the construction and purpose of the powers of attorney and can easily be implied as incidental thereto **(See paragraph c of the Power of Attorney attached as Annexure "A" to the application).** This objection is overruled.

b) Whether there is a cause of action against the Respondents.

[20] Counsel for the Respondents also argued that the instant matter does disclose a cause of action and should be dismissed under **Order 7 Rule 11(a) of the Civil Procedure Rules SI 71-1**. Counsel for the Respondents referred court to the cases of **Kapeka Coffee Works Ltd v NPART, C.A.C.A No 3 of 2000** for the proposition that in determining whether a plaint disloses a cause of action, court should look at the plaint and the annextures only. I agree with this position of the law. I was also referred to the case of ***Auto Garage v Motokov [1971] EA 514*** for the legal position that for a plaint to disclose a cause of action it needs to be shown that the Plaintiff enjoyed a right, which was violated by the Defendant.

[21] The Respondents' counsel contended that from the facts, no cause of action was disclosed by the application. The Applicant is the registered owner of land comprised in **LRV 2836 FOLIO 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** under leasehold tenure issued by the 1st Respondent for 84 years effective **1.9.1962.** The lease was and is still running and has not been either terminated or cancelled by the 1st Respondent. The Applicant has not surrendered his interest in the property but seeks compensation. It was also contended that the Applicant was sued in **Civil Suit No. 64 of 2018** which he settled by consent. It is my finding that this consent settlement does not bind the Respondents who were not parties. The consent merely recognized the various interests of the squatters i.e, the plaintiffs in **C.S No.64 of 2018** thus:

> *"The Defendant (Henry Muganwa Kajura) be compensated subject to the plaintiffs (squatters) being given leasehold certificates of title for the acreage indicated against their respective names..."*

[22] The 2nd Respondent's contention that the Applicant sold the suit property to people who sued him in **C.S No.64 of 2018** where a consent judgment was executed between the Applicant and the plaintiffs therein is not

correct because it is supported by any evidence, for example, no copy of such claimed sale agreement was attached to the affidavit in reply or any other evidence. What is evident is that the Applicant was deprived of his land by squatters whose interests he recognized in **C.S No.64 of 2018** subject to being paid compensation by the 2nd Respondent.

[23] Counsel for the Respondents also referred court to **Article 99(1) of the Constitution of the Republic of Uganda 1995 as amended** for the proposition that executive authority in vested in the president who in the instant case issued a presidential directive for compensation of the Applicant for his land lost. It was contended that the Presidential Directive does not found a cause of action for the Applicant. Counsel also invited court not to be influenced by the Presidential Directive to find for the Applicant as doing so would amount whittling the doctrine of separation of powers. In conclusion, counsel for the Respondents asked court to dismiss the application for failure to disclose a cause of action.

[24] In reply to the objection on failure to disclose a cause of action, learned counsel for the Applicant **Mr. Kasangaki Simon** pointed out that the cause of action in the instant matter as can be read from the Application was for recovery of compensation from the Respondents who settled squatters on the Applicant's land including soldiers. Respondents admitted this through their correspondences and even undertook to value and/or survey his land in order to compensate him for his land lost which they have not done. In his considered view, the pleadings in the application well comply with the principles laid down in the case of **Auto Garage Vs Motokov [1971] EA 514** on disclosure of a cause of action.
In ***Auto Garage Vs Motokov,*** Court held that a cause of action can only be disclosed where it is established that;
(i) The plaintiff has a right;
(ii) The said right has been violated; and
(iii) The defendant is responsible/liable

[25] It was argued by the Applicant's counsel that the Applicant was the registered owner of the suit land comprised in **LRV 2836 FOLIO 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** and under **Section 59 of the Registration of Titles Act** was conclusive owner thereof. His land was taken over by squatters settled by the Respondents without compensation. The 2nd Respondent's agents have established permanent structures on the Plaintiff's land like schools, churches and

administrative units occasioning him loss of land without compensation. This was an actionable wrong.

[26] Counsel for the Applicant contended further that a perusal of the Notice of Motion and all the annexures thereto shows that the same discloses a cause of action. See **Ismail Serugo Vs Kampala City Council and the Attorney General Constitutional Appeal No. 2 of 1998** by Wambuzi, CJ (as he then was) at page 3 of his judgment when he categorically made this point clear that in determining whether a plaint discloses a cause of action under **Order 7 Rule 11** or a reasonable cause of action under **Order 6 Rule 30** only the plaint could be perused when he stated as follows:

> *"I agree that in either case, that is, whether or not there is a cause of action under Order 7 Rule 11 or a reasonable cause of action under Order Rule 29 only the plaint can be looked at..."*

Also see **Attorney General v Oluoch [1972] EA page 392** for the holding that the question of whether a plaint discloses a cause of action is determined upon perusal of the plaint and the attachments thereto with an assumption that the facts pleaded or implied therein are true .

[27] It is the finding of this court that from the pleadings, the Applicant is the registered owner of the suit land comprised in **LRV 2836 FOLIO 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** which has been taken over by squatters settled at the behest of the Respondents. The Applicant lost land to the agents of the Respondents without compensation. These facts have not been rebutted by the Respondents. The Respondents promised compensation to the Applicant and even undertook steps leading to actualization of the process to compensate him but fell short of effecting payment to him which default prompted the Applicant to file the instant matter to recover his compensation. These facts as pleaded in the view of court sufficiently disclose a cause of action. This objection is therefore overruled.

c) Whether the Application is time barred.

[28] The admissions by the Respondents which are contained in correspondences authored in 2021 from H.E The President of Uganda and Permanent Secretary Ministry of Lands, Housing & Urban Development negate the assertion that the Applicant's cause of action is time barred. It was held in **Madhvain International SA Vs Attorney General, C.A.C.A 48/2004**_per Byamugisha J.A (RIP) that

"An acknowledgement is an admission which must be clear, distinct and unequivocal and intentional. There must be no doubt that the debt is being admitted although the amount does not have to be stated."

[29] It is the finding of this court that since the Respondents in various correspondences admitted liability to pay the Applicant compensation, in 2021, it cannot said that his claim is time barred.

Merits of the Application

[30] On the merits, it has been shown by affidavit evidence by the Applicant in paragraph **2 of the Affidavit in support of the Application**, that the 2nd Respondent has not only settled squatters on his land, but has also put up permanent establishments like schools, a Health Centre III and Sub-County Administration Offices contrary to the interests of the Applicant. The Respondents did not lead evidence to show that these establishments do not exist on the Applicant's land comprised in **LRV 2836 Folio 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares**. Therefore, the assertion of the 2nd Respondent that the Applicant is not entitled to compensation for his property lost to these developments established by the agents of the 2nd Respondent on his land is untenable.

[31] The Respondents also did not disprove facts led by the Applicant which show that he lost his land to squatters settled by government including soldiers. In this regard it was shown in evidence that the **President of the Republic of Uganda** who is the fountain of honour acknowledged that the Applicant was entitled to compensation in a letter attached to the affidavit in support of the Application marked **Annexure 'E'. The Permanent Secretary of the Ministry of Lands, Housing and Urban Development** also acknowledged that the Applicant was entitled to compensation in a letter addressed to the Solicitor General dated **10th May 2021** attached to the affidavit in support of the Application, **(Annexure 'F'). The Permanent Secretary of the Ministry of Lands, Housing and Urban Development** also wrote to the Chief Administrative Officer, Masindi on **27th April 2021** a notification of government's efforts to survey and value the Applicant's land to compensate him. This letter was also attached to the affidavit in support of the Application marked **Annexure 'G'.**

[32] The Respondents are, from these uncontroverted facts, correspondences and firm unequivocal representations made to the Applicant, estopped from denying the fact that they committed to compensate the Applicant and even implemented the process leading to his compensation when they embarked on surveying the Applicant's land comprised in **LRV 2836 Folio 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** and undertook to value the same to determine the compensation due to him. Under the **doctrine of promissory estoppel,** the Respondents are bound to compensate the Applicant who has relied on their promise to wait for his compensation which is unpaid to date. See **Ibaga Taratizio Vs Tarakpe Faustina HCT Civil Appeal No. 004 of 2017 at Arua (Arising from Adjumani Grade One Magistrate's Court Civil Suit No. 0010 of 2015).**

[33] The doctrine of legitimate expectation also catches up with the Respondents. The principle means that expectations raised as a result of administrative conduct may have legal consequences. If there is an express promise given by a public authority; or because of the existence of a regular practice which the claimant can reasonably expect to continue; a person claiming some benefit or privilege may have a legitimate expectation of receiving the benefit or privilege. In absence of good reasons, a person who has reasonably relied on the statement/promise is entitled to enforce it through the courts; **Atwongyeire Robert Vs Board of Governors Kyambogo College School, H.C Misc.Cause No.216 of 2016, Kafu Sugar Limited & Anor Vs A.G & 5 Ors, Masindi H.C.C.S No.55 of 2017.**

[34] In this case, under the doctrine of legitimate expectation, the Applicant expected to ultimately be paid compensation of the suit land as promised and as per the conduct of the Respondents or their representation exhibited by the letter of H.E the President of Uganda dated **31st March, 2021** addressed to the Hon. Minister of Lands, Housing & Urban Development directing processing and payment of the Applicant's compensation (Annexture E), and letters of the Permanent Secretary, Ministry of Lands, Housing & Urban Development addressed to the Solicitor General and The Chief Administrative Officer, Masindi dated **10th May, 2021** and **27th April, 2021** respectively committing survey and valuation of the Applicant's land with the view for payment of compensation to the Applicant.

[35] The argument of the Respondents' counsel that the Applicant enjoys an unfettered subsisting lease are made out of context since it is not contested that the 2nd Respondent has permanent structures on the Applicant's land and the Applicant cannot enjoy his lease and/or land anymore since it is occupied by settlers brought by the 2nd Respondent's agents including soldiers. He is therefore entitled to compensation from the Respondents for the land he lost.

[36] In **Buildtrust Construction (U) Limited Vs Martha Rugasira H.C.C.S No. 288 of 2005[2008] UGCommC 85**, cited with approval in **Arch Joel Kateregga & Anor Vs Dr. Hannington Ssengendo & Anor, HCT-00-CC-0CS-0020-2010**, it was held that common law will not allow a person to retain the benefit without compensation on grounds that it is outside the terms of the contract. In the present case, the 2nd Respondent wants her agents to continue occupying the Applicant's land without adequate compensation which is a violation of his right to property. The 2nd Respondent did not deny the Applicant's evidence that she has a school and a hospital on the suit land. Neither has the Respondent denied settling squatters on the Applicant's land. Also noted earlier, the 1st Respondent has not challenged this Application despite due service evidenced by a return of service on record dated 6.9.2022. It is trite that facts not denied are impliedly admitted; See **Valery Alia Vs Alionzi John H.C.C.S NO. 157 OF 2010.** The application is therefore proved on a balance of probability.

[37] This court is also persuaded and agrees with the Applicant's counsel on the submission that the claim by the Applicant is not contested by the Respondents who admit it expressly. In his view, the correspondences by the Respondents regarding the Applicant's ownership of land comprised in **LRV 2836 Folio 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares** and his qualification for compensation under the Land Fund which are on record constitute admissions on the basis of which the Applicant is entitled to judgment on admission by the Respondents under **Order 13 r.6** of the **Civil Procedure Rules SI 71-1.** See also **Masaka High court Civil Suit No. 240 of 2015 (Masaka District Growers Co-operative union & 41 others Vs AG).**

Remedies

[38] On whether the Applicant is entitled to **compensation and the value of compensation,** he led evidence that his land is infested with squatters settled by the agents of the 2nd Respondent. They have made it impossible for him to use his land. He tendered in court a private valuation report by **M/s Katuramu & Company consulting Surveyors** ***marked J*** to the affidavit in support. The valuer put the market value of the Applicant's property at **UGX 12,000,000,000/= (Twelve Billion Uganda Shillings Only).** The Respondents did not contest this valuation nor did they offer any contrary valuation report for either a higher or lower figure.

[39] In the case of **Goodman International Ltd Vs AG & Luwero District Land Board HCCS No. 73 of 2014** court was faced with a similar scenario. The Applicant lost land to squatters settled on his land by agents of government. He sued for recovery of compensation. Court interpreted the actions of agents of government to amount to compulsory acquisition and allowed the Plaintiff's suit. Court also relied on the private valuation report to order for compensation to the Plaintiff of the land lost at the fair current market value of the land as determined by the private valuers.

[40] In the instant case, the Respondents did not provide court with a report from the Chief Government Valuer. They also did not contest the value the Applicant placed on his property assisted by his private valuer. The valuation report was made on 29.8.2022, is current and took stock of all developments on the land. It was signed by **Mr. Ssembajjwe Henry** who is a registered surveyor. In the view of court, it is accepted as fair and represents the correct market value for the land.

[41] In conclusion, this application is allowed with the following orders:

i. The Respondents jointly and/or severally pay the Applicant a sum of **UGX 12,000,000,000/= (Twelve Billion Uganda Shillings Only)** being compensation for the Applicant's land comprised in LRV 2836 FOLIO 17 Buruli Block 10 Plot 66 measuring approximately 982.5560 hectares.

ii. The payment in (i) shall carry interest at a rate of 10% per annum from the date of judgment until payment in full.

iii. Each party to bear their respective costs of this application since the Respondents' agents had made the necessary directives for the processing and payment of the compensation but were merely let down by their technical section which failed to carry out the required survey and valuation of the property.

I so order.

Signed, dated and delivered at **Masindi this 11th** day of **October, 2022.**

Byaruhanga Jesse Rugyema
JUDGE.