THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

MISC. APPLICATION NO. 544 OF 2020

(Arising from CIVIL SUIT NO. 240 OF 2018)

1. **CONNIE KEKIYONZA WATUWA**
2. **JAMES KHAUKA**
3. **PAMELA NAMAKANDA :: APPLICANTS**
   (Suing as administrators of the estate of the Late David Watuwa)

VERSUS

ATTORNEY GENERAL:: RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The applicants brought this application by way of Notice of Motion under Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, Order 13 Rule 6 and Order 52 Rule 1 and 3 of the civil procedure rules for orders that;

1. Judgment on admission be entered for the applicants against the respondent in HCCS 240 of 2018
2. Costs of this application be provided for

The grounds in support of this application are stated in the affidavit of the Administrator, Connie Kekiyonza Watuwa, which briefly states;

1. That the late Major David Watuwa was the owner of ranch No. 2 Bunyoro Ranching scheme which was originally located in Pantadoli 'A' village Kakooko Parish, Mutunda, Sub county, Bweyale town council, Kiryandongo District measuring approximately 1,513 hectares (approximately 3,738.623 acres). The late Major Watuwa had been in

occupation and use of the said land, after he had been given a formal lease offer in July 1986.

2. That in 1993, the government of Uganda through the ministry of agriculture, animal industry and fisheries, acting under the ranches restructuring board, subdivided and allocated part of the ranch to settle squatters on it.

3. That the total acreage of ranch No. 2 Bunyoro ranching scheme before the sub division, ranch 2A with a total acreage of 1,448.006 acres was retained by the late and ranch 2B with a total acreage of 2,291 acres was given to various squatters for their resettlement.

4. That the subdivision of ranches restructuring scheme deprived the plaintiffs/applicants of 2,291 acres of land, later renamed ranch no. 2B with a promise by the government that the late David Watuwa would be compensated for the land and developments thereon
5. That I know that neither the late during his lifetime nor the beneficiaries to his estate have been compensated by the government of Uganda and the family of the deceased has never been compensated to date

6. That the plaintiffs have, in an effort to get compensated for the compulsory acquisition of the land by government, written several letters to his excellency the president dated 16th August 2012 and 18th August 2017, and to the permanent secretary ministry of lands, housing and urban development requesting for re-valuation and payment of compensation dated 19th November 2014 none of which have borne fruit

7. That I made numerous follow up efforts with relevant government departments seeking compensation, to no avail and in one follow up meetings at the ministry of lands, housing and urban development, she was shown and given a copy of the valuation report that had been made on 25th May, 2015, in relation to Ranch No. 2B Bunyoro ranching scheme, wherein the respondent had attached a value

8. That I know the respondent in their valuation report dated 15th May 2015 recognized that neither the late Major David Watuwa nor the applicants as administrator to his estate have never been compensated for ranch No. 2B Bunyoro ranching scheme

9. That I know the Minister of Lands, Housing and Urban Development in a letter dated 12th January, 2018 admitted that the government had promised to compensate the applicants but had never done anything to that effect. The said minister asked the Ministry of Finance to pay the assessed valuation amount just but this was never done

10. That I know the Permanent Secretary, Ministry of Lands, Housing and Urban Development in her letter dated 16th April 2019 wrote to the solicitor general confirming the following;
    a) Ranch No.2 Bunyoro ranching scheme was allocated to the late major David Watuwa
    b) The subject was originally located in Panyadoli 'A' Village Kakooko Parish, Mutunda sub county, Kibanda county, Bweyale town council, Kiryandongo district, measuring approximatel 1,513 hectares (approximately 3,738.623 acres)
    c) The government took 2,290.617 acres i.e. Ranch No. 2b and the Rancher retained Ranch No.2A measuring 1,448.006 acres;
    d) Ranch No. 2B measuring approximately 927 hectares (approx. 2,2209.617 acres) was re-valued by the office of the chief government valuer in 2015 and a fair compensation award including 15% disturbance allowance was set at UGX. 3,161,051,460/=(Uganda shillings three billion one hundred sixty one million fifty one thousand four hundred sixty only)

The applicant served the application to the Attorney General who acknowledged receipt through Esther on the 10th day of September, 2020 in the Attorney general's chambers.

In the interest of time, the applicants and Attorney General made written submissions which this court considered. The applicant was represented by *Matsiko Joseph and Kunta Kinte Joachim* while the Attorney General was represented by *Geofrey Madetta*

The application is for entering a judgment on admission according to order 13 rule 6 of the civil procedure rules against the Attorney General

The issues that arise are;

Issue 1: Whether there are grounds that warrant the issue of a judgment on admission?

The applicant's counsel submitted that Order 13 rule 6 of the civil procedure rules provides that any party may at any stage of a suit where an admission of such has been made either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he/she may be entitled to without waiting for the determination of any other question between the parties and court may upon the application make such order, or give such judgment as the court may think just.

He further cited the case of **Kibalama v. Alfasan Belgie CVBA [2004]2 EA 146 (CAU) at page 153,** was quoted with approval in the case of **Dembe trading enterprise limited v. Global electrical and electronics (Misc. App No. 202 of 2011**), where Justice Mulyagonja held that

In **Momayi v. Hatim and another [2003]2** EA where it was held that "admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they must result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends on the language used. The admission must have no room for doubt."

According to the applicants counsel the total sum of correspondences, from the ranch restructuring board, Minister of Lands, Housing and Urban Development and the Permanent Secretary Ministry of Lands, Housing and Urban Development, the government of Uganda unequivocal, unconditionally, plainly and unambiguously admits the facts discussed.

The admission is not a matter of right but rather a matter of discretion of a court.

The Attorney general submitted relying on the case of **Kibalama v. Alfasan Belgie CVBA (supra) and order 13 rule 6.** He argued that it is only an allegation that the government of Uganda through various ministers and departments have admitted to the fact that the applicants are administrators to the estate of the Late David Watuwa are entitled to compensation for ranch No. 2 Bunyoro ranching scheme, valued at UGX 3,161,051,460 as per 15th May 2015

He contends and avers that the application is not teneable as the annexures attached to the submissions and pleadings were nothing more than internal government correspondences between senior officials consulting amongst themselves and the respondent has not addressed any correspondences to the applicants admitting liability

The annexures upon which the application is based were internal communications which do not indicate explicit admission that the applicants are entitled to compensation as alleged. He contends that the action of seeking a valuation report from the chief government valuer is one of the usual steps taken by the respondent when ascertaining the values of claims filed against the government of Uganda and does not amount to an admission of liability, and thus concluded that there are no grounds that warrant the issuance of an order of judgment on admission as per Order 13 rule 6

Counsel addressed his mind to the case of **Future Stars Investments Limited v. Nasuru Civil suit No. 0012 of 2017,** Justice Stephen Mubiru held as follows: under order 13 rule 6, the court is empowered to enter judgment on admission at any stage of a suit, where an admission of facts has been made either on the pleadings or otherwise. The purpose of this provision is to enable a party obtain a speedy judgment to the extent of the relief which according to the admission of other party, he is entitled to. It is a settled principle that a judgment on admission is not a matter of right but rather a matter of discretion of court.

The Attorney General submitted that a judgment on admission is not a matter of right but rather a matter of discretion of the court, because it had been submitted for the respondent that the basis of this application is internal communication that are not unequivocal about payment of compensation to the applicants

Thus court should exercise its discretion judiciary and decline to grant the order sought.

Analysis

The applicants are suing as administrators of the estate of the late Major David Watuwa, who are required to prove the allegations claimed against the respondent the Attorney general (whom we sue on behalf of government) and a judgment on admission is granted by this honorable court as per;

Order 13 rule 4 of the CPR provides for the *Notice to admit facts.*

"Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact mentioned in the notice, and in case of refusal or neglect to admit the fact within six days after service of the notice, or within such further time as may be allowed by the court, the cost of proving the fact shall be paid by the party so neglecting or refusing whatever the result of the suit may be, unless the court otherwise directs …"

Rule 6 thereof provides for *Judgment on admissions.*

Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just."

The above provisions use words "either on the pleadings or otherwise" this means that admissions come to court in other ways other than on the parties' pleadings. Circumstances where pleadings before the court contain an admission, the other party is entitled to seek judgment upon such admission. However an admission may not be disclosed on the pleading but may come to court through other ways. Such other ways include a response to a notice to admit facts as per Order 13 rule 4 of CPR by way of documents executed by parties, this can either be attached to pleadings or not, or by way of an oral or written statement made by a party during the proceedings before the court. This Court had occasion to consider this point in the case of ***Andrew Mirembe Tumwebaze vs Deox Tibeingana, HC MA No.149 Of 2020 (From HCCS No. 798 0f 2019)***.

Under *Rule 6 thereof*, where an admission of facts has been made, either on the pleadings or otherwise, a party to such a suit may apply to the court for judgment or order as he/she may be entitled to upon that admission, without waiting for the determination of any other question between the parties; and the court may grant such judgment or order, as it may think just. In my view, the use of the words "either on the pleadings or otherwise" covers admissions that come to the court in other ways other than on the parties' pleadings.

"Pleadings" here are construed to mean those pleadings that are before the court before the issue of admission comes in, that is to say, the plaint, written statement of defence and counterclaim, and eventual replies till closure of pleadings. Where any such pleading contains an admission, the other party is entitled to seek judgment upon such admission. That is the one angle of rule 6.

It is a settled principle of the law that a judgment on admission is not a matter of right but rather one of exercise of discretion of the Court. The admission should be unambiguous, clear, unequivocal and positive. Where the alleged admission is not clear and specific, it may not be appropriate to take recourse under the provision. **See: *Future Stars Investment (U) Ltd vs Nasuru Yusuf, HCCS No. 0012 of 2017***. The judge's discretion to grant judgment on admission of fact under the law is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment. **See: *Cassam v. Sachania [1982] KLR 191***

The applicants submitted that the government compulsory acquired their land through a letter dated 28th December 1993, an advert was ran on the 2nd of July 2001 in regards to a payment of ranchers for lost facilities in government sponsored schemes. The said land was valued and a valuation report concluded that valued land of 2,290.617 at 2,784,740,400 and an addition of a 15% as disturbance allowance adding up to a total of 3,161,051,460. In a letter from the Minister of Lands, Housing and Urban Development dated 12th January 2018 addressed to the Minister of Finance, Planning and Economic Development (annexure J), which provided that due to budgetary constraints payment was not made. The Permanent Secretary, Ministry of

Lands, Housing and Urban Development in her letter also dated 16th April 2019 (annexure L) wrote to the solicitor general in regards to civil suit No. 240 of 2018. Counsel in his submission stated that the total sum of all correspondences; from the Ranch Restructuring Board; Senior Government Valuer Ministry of Lands Housing And Urban Development; Minister for Lands, Housing And Urban Development; And The Permanent Secretary Ministry of Lands Housing And Urban Development; The Government Of Uganda unequivocally, unconditionally, plainly and unambiguously admits to the correspondences.

On the other hand, the Attorney General argued that it was only an allegation that the government of Uganda through various ministers and departments admitted to the fact that the applicants are administrators to the estate of the late Major David Watuwa entitled to compensation for ranch No.2B Bunyoro ranching scheme, valued at UGX 3,161,051,460 as at 15th May 2015. He further avers that the application is not tenable as the annextures attached to the submissions and pleadings were nothing more than internal government correspondences between senior officials consulting amongst themselves and that he as the respondent has not addressed any correspondences to the applicants admitting liability.

In my view, the annexures the applicants are relying on are clear admissions covered by the provisions of the law of judgment on admission. It is argued by the respondent's counsel that the said annexures were more of internal communications which did not indicate explicit admission that the applicants are anyway entitled to the said compensation. This argument is flawed when the circumstances of the entire case indicate otherwise. The applicant's ranch was clearly included in the notice made in the New Vision in 2001 and the Chief Government Valuer went ahead to assess and value of the ranch in 2015 and the Minister responsible for Lands has also acknowledged the need for compensation . This is an unequivocal act of the government towards the compensation process since it involved the applicants' representatives and thus created a legitimate expectation that the respondent was going to compensate the applicants.

The applicants informed this court that the valuation report was one of the annexures that confirmed the admission. The communication (Letter) by the Minister for Lands further buttresses the view that the applicants are entitled to compensation since it was an act that

was premised on available evidence from the concerned office and the Attorney general is estopped from denying compensation and contending that it was a mere internal communication between government agencies or officials. The actions of the government officials indeed amount to Estoppel by conduct since there was a precise and unambiguous representation and there was an unequivocal assurance prompting the applicants to expect compensation.

Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. *Lord Denning MR* in the case of ***Moorgate Mercantile Co. Ltd v Twitchings [1976] QB 225*** held that *"Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and equity. It comes to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so"*

The whole concept of estoppel is more correctly viewed as a substantive rule of law and it a flexible doctrine that aims at minimum equity to do justice. Estoppel is said to be based on the maxim, *allegans contrarir non est audiendus* (a party is not to be heard to allege the contrary) and is that species of presumption *juries et de juri* (absolute and conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but as against a particular party, and that only the reason of some act done; it is in truth a kind of *argumentum ad hominem. See* ***B.L Sridhar v K.M Munireddy [2003] AIR SC 578***

It is then my understanding that the correspondences of the defendants officials are not in dispute and respondent has not deposed to show anything to the contrary. Likewise, the Written Statement Defence does not set out a clear defence on what the plaintiff alleges in the plaint. This court is satisfied with the evidence on record and circumstances surrounding the whole case that this is proper case to exercise its discretion to enter judgment on admission.

The court in consideration of the law and both counsels' submission finds that the applicants are entitled to claim a judgment for compensation of value as assessed by the Chief Government Valuer in 2015 for Ranch No. 2 Bunyoro Ranching Scheme.

It is so ordered.

SSEKAANA MUSA
JUDGE
30th/04/2021