

A PROCEEDINGS REPORT OF THE HEARING OF THE REFINERY-AFFECTED PEOPLE'S COURT CASE AGAINST GOVERNMENT OVER DELAYED RELOCATION AND COMPENSATION



APRIL 20, 2017

HIGH COURT KAMPALA

Table of Contents

1	INTRODUCTION	3
1.1	Background	3
2	THE COURT PROCEEDINGS	3
2.1	PLAINTIFF’S LAWYER ASKS FOR DATE TO CROSS EXAM WITNESSES	3
2.2	STATE ATTORNEY MAKES SUBMISSIONS, ASKS FOR MORE TIME TO SETTLE ISSUES	4
2.2.1	Mr. Elungat Francis gives an update on progress of compensation and relocation	4
2.3	JUDGES GIVES MORE TIME FOR CASE TO BE SETTLED	5
3	CONCLUSION & WAY FORWARD	5
4	PARTICIPANTS	5

1 INTRODUCTION

On April 20, 2017, the refinery-affected people's case against government was heard by Justice Andrew Bashaija at the Kampala High Court. The refinery-affected people were represented by their lawyer, Mr. Adonijah Bemanyisa from Bemayisa and CO. Advocates while government was represented by Ms. Akello Apita Susan on behalf of the Attorney General (AG), and Mr. Francis Elungat represented the Ministry of energy who are the defendants in case.

1.1 Background

In March 2014, the refinery-affected people together with Africa Institute for Energy Governance (AFIEGO) filed a suit against government over delayed relocation and failure to promptly, fairly and adequately compensate them prior to acquiring their land as provided for under Article 26 of the Constitution.

In 2012, government had compulsorily acquired 29 sq. km of land in Kabaale Parish in Buseruka sub-county, Hoima district for the construction of the proposed oil refinery; however up to date, communities are still waiting for their compensation while others are yet to be relocated. The refinery-affected communities continue to live in ghost villages with no social and basic amenities such as water, health care and are being attacked by wild animals as a result of the bushy areas. Moreover, government placed a cut-off date of July 2, 2012 under which any development that took place on the land would not be compensated.

In this regard, the refinery-affected people together with AFIEGO run to the Judiciary in hopes that the human rights of the affected communities would be respected. However, since 2014 when the case was filed, no conclusive judgment has been made as families continue to live in isolated areas with no access to food, safe water, education, shelter and health services among others.

2 THE COURT PROCEEDINGS

2.1 PLAINTIFF'S LAWYER ASKS FOR DATE TO CROSS EXAM WITNESSES

Justice Andrew Bashaija [judge hearing the case] opened the hearing by asking the plaintiff's [refinery-affected people and AFIEGO] and defendant's [ministry of energy - government] lawyers to make their submissions.

Mr. Adonijah Bemanyisa [lawyer representing the refinery-affected people and AFIEGO as the plaintiffs] opened his submission by calling the plaintiffs into the courtroom. He added that the refinery-affected people had to travel for over 300km from Kabaale-Buseruka, Hoima to Kampala hoping to get justice for their land and property.

Mr. Bemanyisa informed court that he preferred to address the current issues of the case since it is ongoing. He said they have both filed scheduling notes, respective trial balance in addition to

witness statements, adding that the subject matter of the case is in Hoima where government acquired the 29sq km of land for the construction of the proposed oil refinery.

Mr. Bamayisa requested Justice Bashaija to fix a date for cross-examination of the witnesses bearing in mind that, it's a case of 2014 and plaintiffs are not allowed to use their land, which he said is also a violation of Article 26 of the Constitution that calls for prompt fair and adequate compensation prior to acquisition of one's land.

Justice Bashaija in his response said, the case should have been filed at the Civil Division at Masindi High Court since is within their jurisdiction. In addition, he said, "Unless the Attorney General's representative makes an application for it to be heard in Kampala, it would be better if it is transferred to Masindi."

Mr. Bemayisa in his reaction said, "The case was first filed at the Civil Division, however they were advised by the court that the case should be heard at the High Court in Kampala". He further added that the AG representative can advise whether it should be transferred back to Masindi or stay in Kampla.

2.2 STATE ATTORNEY MAKES SUBMISSIONS, ASKS FOR MORE TIME TO SETTLE ISSUES

Ms. Susan Apita Akello opened her submission by informing court that as much as the subject matter is in Hoima, she has no objection for the case to be heard in Kampala High court.

She then called on Mr. Francis Elungat, the Land officer in the ministry of energy to give an update of the progress that has been made towards compensating and resettling the remaining affected communities.

2.2.1 Mr. Elungat Francis gives an update on progress of compensation and relocation

Mr. Elungat informed court that the case is ongoing and progress was made towards compensating and resettling the affected communities. He said some of the plaintiffs had eventually accepted to sign for the inadequate compensation they had contested against, while the issue of delayed relocation, the houses were ready and waiting an administrative decision to be given to the people. In addition, Mr. Elungat informed court that land was bought in Kyakabogo and some of the affected communities had already seen it.

Furthermore, he said some of the community members who have not been paid had not initially signed the acknowledgement forms and therefore, government could not advance payment to them.

Mr. Bemanyisa retaliated saying that from the submission of the Mr. Elungat, it was clear that government is still trying to compensate people in 2017 using the compensation rates of 2012 when their land was acquired and evaluated which is a violation of Article 26 of the constitution.

Adding fuel to fire, Mr. Bemanyisa said government placed a cut-off date of July 2, 2012 upon which any developments that took place on the land would not be compensated and yet for over four years, communities are still leaving in ghost villages with no access to food, safe water, education and health services among others. Furthermore, Mr. Bemanyisa said some of the affected people who accepted the inadequate compensation were constrained due to the harsh living conditions they were facing.

He also brought court's notice to the current land law which is inadequate in addressing existing challenges since it lacked regulations and guidelines to determine what "prompt, fair and adequate compensation means". Mr. Bemanyisa requested the judge to issue a directive to the minister of lands to formulate regulations especially for land acquisition and resettlement.

2.3 JUDGES GIVES MORE TIME FOR CASE TO BE SETTLED

Justice Bashaija in his ruling said the issue of constitutional interpretation to determine what "adequate, fair and prompt compensation means" should be taken to the Constitutional Court, as it is not in his jurisdiction to address the issues that require constitutional interpretation. He further said since it's an ongoing case and there is progress being made, more time for the issues to be addressed will be given.

The next hearing was fixed on September 14, 2017.

3 CONCLUSION & WAY FORWARD

With court rejecting to fast track the hearing by fixing the date for cross examination of witnesses and deciding on the refinery-affected people's case, it is urgent that AFIEGO and other civil society organisations continue to campaign for Public Interest Litigation cases to be allocated a time frame under which they must be decided on.

In addition, AFIEGO and other partners should also advocate for the establishment of a Human Rights division working independently to counter the slow and painful court system which continues to frustrate poor Ugandans facing gross human rights abuses.

4 PARTICIPANTS

No	Name	Sex	Village/organization	Contact
1.	Mr. John Bosco Wandera	M	Kitegwa	0782838400
2.	Mr. Godfrey Byaruhanga	M	Kitewga	0783473773
3.	Mr. Kato Fenehance	M	Nyakasenene	0774953307
4.	Mr. Deus Turyamuhika	M	Kyapaloni	0783772670
5.	Ms. Fausta Tumuhairwe	F	Kyapaloni	0777219608

6.	Mr. Innocent Tumwebaze	M	Nyahaira	0789726114
7.	Mr. Geoffrey Kiwede	M	Kyapaloni	0777314555
8.	Mr. Christopher Opio	M	Kabaale	0779983101
9.	Mr. Adonijah Bemanyisa	M	Bemanyisa and Co Advocates	0782664141
10.	Mr. Dickens Kamugisha	M	AFIEGO	dkamugisha@afiego.org
11.	Mr. Samuel Okulony	M	AFIEGO	sokulony@afiego.org
12.	Ms. Diana Nabiruma	F	AFIEGO	dnabiruma@afiego.org
13.	Mr. Edward Sekika	M	<i>The Observer</i>	0775008971
14.	Ms. Barbra Kabahumuza	F	<i>New Vision</i>	0789041313
15.	Mr. Ephrain Kasozi	M	<i>Daily Monitor</i>	0712894948