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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
ORIGINATING SUMMONS NO. 16 OF 2025**

HON. HENRY BANYENZAKI ::: PLAINTIFF

10

VERSUS

TROPICAL BANK (U) LTD ::: DEFENDANT

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

JUDGMENT

Introduction

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This suit was brought by way of Originating Summons under **Order 37 rules 4 and 8 of the Civil Procedure Rules, SI 71-1**, seeking:

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1. A permanent injunction stopping the Defendant from further auctioning and even selling the Plaintiff’s property subject to the mortgage deed.
2. An order compelling the Defendant to forward the certificate of title of land comprised in **Plot 1-3 Peninsula Crescent, Luzira Port Bell LRV 4228 Folio 14** to Uganda Electricity Transmission Company Limited (UETCL) for processing of the Plaintiff’s compensation.
3. A declaration that the Defendant is in contempt of Court.
4. General, punitive and exemplary damages.
5. Costs of the suit

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Brief facts

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5 The brief facts of this suit are detailed in the affidavit in support deponed by **Hon. Henry Banyenzaki**, the Plaintiff herein, and is summarized below:

That on 12th February, 2013, he obtained a loan of UGX 2,000,000,000/= from the Defendant and, as security, he mortgaged his property comprised
10 in **Block 276 Plots 694, 695, 696 and 700 land at Naluvule, Wakiso District** and **Plot 1-3 Peninsula Crescent, Luzira Port Bell LRV 4228 Folio 14**. That the parties also executed a mortgage deed to that effect. That he paid UGX 3,000,000,000/= in settlement of the loan and its interest and it was agreed that the outstanding balance was UGX
15 1,000,000,000/=. That in 2017, he sued the Defendant vide **Civil Suit No. 962 of 2017** challenging his indebtedness and that the parties agreed to settle the said suit by way of a consent. That in the said Consent Judgment, it was agreed that; he was indebted to the Defendant to a tune of UGX 1,000,000,000/=, of which he had paid UGX 400,000,000/=; and
20 that the balance of UGX 600,000,000/= would be offset from the monies received, on his bank account, as compensation by UETCL for his affected land comprised in **Plot 1-3 Peninsula Crescent, Luzira Port Bell LRV 4228 Folio 14** and that upon the execution of the Consent Judgment, the Defendant would release the title of the affected property to UETCL for
25 purposes of processing the compensation amount so that the Defendant gets paid and thereafter releases the other certificates of title.

That despite the clear terms of the Consent Judgment, the Defendant has never released the certificate of title for the affected land to UETCL to facilitate the compensation and subsequent repayment of the said loan.
30 That in spite of all the above, he went ahead to process the compensation and the said process is still ongoing and that the payments are expected

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5 to be made this financial year. That the Defendant was aware of the said
process however, on 6th October, 2025, he found out that the Defendant,
through its appointed auctioneers Vital Signs Debt Solutions, instituted a
foreclosure action against him and served him with a 21 days' notice
threatening to sale the suit properties. Further, that on 20th October, 2025,
10 the Defendant went ahead to advertise his other properties to the public
through the Daily Monitor newspaper. That the Plaintiff is desirous of
redeeming his properties from the purported sale since the loan balance is
not due and payable, hence this suit.

The Defendant filed an affidavit in reply, deponed by **Mr. Bamweyana**
15 **Asuman** its Company Secretary and Head of Legal and Compliance,
contending that the issues raised by the Plaintiff are inherently complex
and unsuitable for resolution under this procedure, that there has been
persistent non-compliance with the terms of the Consent Judgment for a
period exceeding 5 years and that the debt remains outstanding and since
20 the collateral securities were never discharged, the Defendant retains the
inherent and unfettered right to exercise its remedies of foreclosure.

That prior to the execution of the Consent Judgment, the Plaintiff misled
the Defendant by representing that he was expecting compensation from
UETCL however, immediately after its execution, UETCL issued a letter
25 indicating that they were still conducting investigations to determine
whether the Plaintiff qualified as a project affected person and that in
2021, the Plaintiff instituted **Civil Suit No. 1171 of 2021** against UETCL
for allegedly failing to compensate him thus proving that no compensation
had been confirmed or approved for payment to the Plaintiff. Further, that
30 despite the institution of the said suit, there is no substantive progress,
for now 5 years thus underscoring the speculative and unfounded nature

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5 of the Plaintiff's claim. That the absence of the said compensation does not
in any way affect the Defendant's right to recover the outstanding debt of
UGX 600,000,000/=.

In rejoinder, the Plaintiff reiterated his previous averments and added that
the Consent Judgment is still valid and binding on both parties, Also, that
10 the Office of the Prime Minister has confirmed that he is a project affected
person and therefore he should be compensated.

Representation

The Plaintiff was represented by **M/s Walyemera & Co. Advocates** while
M/s Kaweesi & Partners Advocates represented the Defendant.

15 Both parties were directed to file their written submissions but only the
Plaintiff complied with Court's directives and the same have been
considered herein.

Issues for Determination

- 20 1. Whether the Plaintiff is in default of his loan agreement with the
Defendant?
2. Whether the said amount due to the Defendant is due and payable
at the time of the Defendant commencing foreclosure proceedings
against the Plaintiff?
- 25 3. Whether the Defendant is entitled to foreclose on the Plaintiff's
property comprised in **Busiro Block 276 Plots 694, 695, 696 and
700 land at Naluvule, Wakiso District** and **Plot 1-3 Peninsula
Crescent Luzira Port Bell**?
4. Whether the Defendant should be permanently stopped from
conducting any sale of the Defendant's property?
- 30 5. Whether the Defendant is in contempt of a Court order?

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- 5 6. Whether the Defendant should comply with the Consent Judgment entered with the Plaintiff and forward the certificate of title of land comprised in **Plot 1-3 Peninsula Crescent, Luzira Port Bell LRV 4228 Folio 14** to UETCL?
7. Whether Court should award costs against the Defendant?

10 Analysis and Determination

As provided for under **Section 101 of the Evidence Act, Cap. 8** whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist. (See also **Sections 102, 103 and 104 of the Evidence Act** and the case of **Sebuliba Busuulwa Vs Co-operative Bank Ltd [1982] HCB 129**).

Order 37 rule 4 of the Civil Procedure Rules stipulates that:

20 *“Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable before a judge in chambers, for such relief of the nature or kind following as may be by the summons specified, and as the circumstances of the case may require; that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance or delivery of possession by the mortgagee.”*

30 Originating Summons is one of the modes of commencing a civil suit wherein; the dispute in question concerns a straight matter of law, there is an unlikely substantial dispute of fact in the matter, affidavits are used

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5 as the pleadings for the case and oral evidence is not required since the
matter can be resolved by relying on the affidavit evidence adduced by the
parties. (See: **Guaranty Trust Bank (U) Ltd Vs Dokwals (U) Ltd &
Another, Originating Summons No. 01 of 2021** and **Jas Ventures
International Ltd Vs Okello Carlos Orach, Originating Summons No.
10 08 of 2023**).

It is now trite that Originating Summons are intended to dispose of simple
and non-contentious matters in a speedy manner. (See: **Order 37 rule 11
of the Civil Procedure Rules** and the case of **Nesta Petroleum (U) Ltd Vs
Silcon Oil (U) Ltd & Another, Originating Summons No. 03 of 2022**).

15 In the instant case, the Plaintiff seeks a permanent injunction stopping
the Defendant from further auctioning and even selling the suit properties,
an order compelling the Defendant to forward the certificate of title of land
comprised in **Plot 1-3 Peninsula Crescent, Luzira Port Bell LRV 4228
Folio 14** to UETCL, a declaration that the Defendant is in contempt of
20 Court, general damages, punitive damages, exemplary damages and costs
of the suit.

The Plaintiff contends that the parties entered into a Consent Judgment
vide **Civil Suit No. 962 of 2017**, and therein it was agreed that; the
Plaintiff was indebted to the Defendant to a tune of UGX 1,000,000,000/=,
25 of the which he had paid UGX 400,000,000/=; the balance of UGX
600,000,000/= would be offset from the monies received, on the Plaintiff's
bank account, as compensation by UETCL for his affected land comprised
in **Plot 1-3 Peninsula Crescent, Luzira Port Bell LRV 4228 Folio 14**
and that upon the execution of the Consent Judgment, the Defendant
30 would release the title of the affected property to UETCL for purposes of

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5 processing the compensation amount so that the Defendant gets paid and thereafter releases the other certificates of title.

That however, to date, the Defendant has never released the said certificate of title to UETCL to facilitate the compensation and subsequent repayment of the said loan. That also, on 6th October, 2025, the Defendant instituted
10 foreclosure proceedings against him and on 20th October, 2025, it advertised the Plaintiff's properties for sale, despite being aware that the compensation process was ongoing.

According to annexure "E" a Consent Judgment dated 19th October, 2020 between the Plaintiff and the Defendant, attached to the affidavit in
15 support, the parties agreed that the outstanding loan balance was UGX 600,000,000/= and that this would be offset from the monies received by the Plaintiff on his bank account from UETCL as compensation for his affected land.

The parties also agreed that the Defendant would release the certificate of
20 title for the affected land. Annexure "G" attached to the affidavit in support, is a notice of sale of the mortgaged property dated 6th October, 2025 from the Defendant to the Plaintiff informing him that his properties comprised in **Busiro Block 276 Plots 694, 695, 696 and 700 land at Naluvule, Wakiso District** were going to be sold so as to pay the
25 outstanding loan of UGX 1,682,283,216/= while annexure "H" is a daily Monitor newspaper extract of 20th October, 2025 advertising the said properties for sale by way of public auction.

The above claims are contested by the Defendant who avers that the Defendant is not in contempt of Court but rather that, there has been
30 persistent non-compliance with the terms of the Consent Judgment for a period exceeding 5 years and that the debt remains outstanding. That prior

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5 to the execution of the Consent Judgment, the Plaintiff misrepresented to
it that he was expecting compensation from UETCL but it was later
established that UETCL was still conducting investigations to determine
whether the Plaintiff qualified as a project affected person. That therefore,
in the absence of the compensation, the Defendant exercised its right to
10 recover the outstanding debt of UGX 600,000,000/=.

The Defendant relied on annexure **“H”**, attached to the affidavit in
rejoinder, a letter dated 12th October, 2021 from UETCL to the Defendant
informing it that the compensation process for the affected land was still
ongoing and that any negotiations with the Plaintiff were to be done at
15 their own discretion.

I have observed that in his affidavit in rejoinder, the Plaintiff contends that
the compensation was approved by the Chief Government Valuer and that
the Ministry of Energy and Mineral Development wrote to UETCL
confirming the valuation and instructing the Chief Executive Officer of
20 UETCL to settle his claim. That additionally, the Office of the Prime
Minister also confirmed that he ought to be compensated. In evidence, the
Plaintiff adduced annexures **“A” to “G”** attached to the affidavit in
rejoinder.

According to annexure **“A”** attached to the affidavit in rejoinder a letter
25 dated 20th January, 2025, the Ministry of Energy and Mineral
Development requested the Chief Government Valuer to value the land
restoration costs, if any, due to the Plaintiff. On 22nd April, 2025, the Chief
Government Valuer communicated that the business loss compensation
was UGX 2,142,652,801/= while the land restoration costs were UGX
30 922,199,575/= as per annexure **“B”**. On 3rd September, 2025, vide a letter
annexure **“E”**, the Rt. Hon. Prime Minister directed that due diligence is

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5 undertaken before UETCL pays the claim to avoid further litigation. As per annexures “F” and “G” attached to the affidavit in rejoinder, on 18th September, 2025 and 3rd December, 2025, the Hon. Minister of State for Energy directed UETCL to settle the Plaintiff’s claim.

10 In my view, the above facts raise complex and substantial disputes of fact which cannot be resolved under this procedure. As was held in the case of ***Jas Ventures International Ltd Vs Okello Carlos Orach (supra)***, where there are fundamental contestations over facts, it is best to decline to answer the questions in the summons and insist that those matters are tried in a suit commenced by a plaintiff.

15 In addition, the Plaintiff seeks a declaration that the Defendant is in contempt of Court orders. In my view, this is also a contentious issue. Further, the Plaintiff seeks general, punitive and exemplary damages. In the case of ***Uganda Ecumenical Church Loan Fund Ltd Vs Mary Florence Nabyinja Mbuga, OS No. 01 of 2005***, it was held that a claim
20 for general damages in an Originating Summons are misplaced since it is not envisioned under **Order 34 rule 3 of the Civil Procedure Rules**. Furthermore, in the case of ***Alps Investments Limited Vs Bank of India (Uganda) Limited, OS No. 01 of 2024***, this Court held that evidence has to be called, usually at a trial, to prove general damages in order to assist
25 the Court to reach that intuitive assessment and that therefore, it is unlikely that a proper assessment of general damages can be reached in a suit brought by Originating Summons. In the circumstances of this case, the above principles also apply to the Plaintiff’s claims for punitive and exemplary damages.

30 In conclusion, I am not satisfied that this is a proper procedure for the determinations of the issues raised herein.

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5 In the premises, I hereby make the following orders:

1. This Originating Summons is hereby dismissed. The Plaintiff may, if he so desires, commence an action by plaint to cause the determination of the contentions noted above.

2. Each party shall bear their own costs.

10 I so order.

Dated, signed and delivered electronically this **22nd** day of **June, 2026**.



Patience T.E. Rubagumya

JUDGE

22/06/2026

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Delivered via ECCMIS

20 *Under the Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025.*