KOREAN INVESTOR'S LAND DISPUTE AWARD UPHELD

By Eddie Ssejjoba

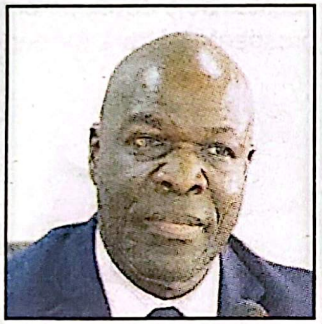
The Court of Appeal has awarded sh300m to Hwan Sung Limited in general damages after dismissing an appeal against it in a 25-year old dispute over prime land in Kampala.

Justices Geoffrey Kiryabwire and Moses Kazibwe Kawumi agreed with the judgment of Justice Christopher Gashirabakye, who dismissed the appeal for lack of merit and upheld the sh300m award by the High Court in Kampala.

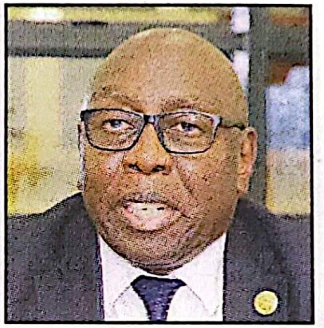
M&D Timber Merchants and Transporters Limited, a private company, had appealed against the High Court judgment that ruled in favour of Hwan Sung Limited, a firm owned by a Korean investor, Sung-Hwan Kim.

BETWEEN THE LINES

Court of Appeal has awarded sh300m to Hwan Sung Limited in general damages in a 25-year old prime land wrangle.



Justice Moses Kazibwe



Justice Geoffrey Kiryabwire

LOCATED IN NAKAWA

The two companies have been involved in a dispute over ownership of Plot 30 Mukabya Road, formerly Plot M249, located in Nakawa, in civil suit appeal number 386 of 2022.

Hwan Sung Limited was sued together with Kampala District Land Board against a decision of the High Court (Land Division) given by Justice Flavian Zeija on April 01, 2022. In the judgment delivered on April 8, Justice Gashirabakye stated, "In the circumstances of this case, it is very natural to presume that the 1st Respondent (Hwan Sung Limited) was inconvenienced by the Appellant's (M&D Timber Merchants and Transporters Limited) actions. The first Respondent has not been utilising the suit property for over 25 years because the appellant was in possession and had blocked access".

"As such, they are entitled to general damages," Justice Gashirabakye wrote in a decision that was carried by his two colleagues. The judgment followed a series of court battles that went up to the Supreme Court and remained unresolved for over decades.

CASE FACTS

The facts of the case indicated that in 1978, the then Kampala City Council (KCC) allocated the suit land to one Hussein Abdi for two years but he kept applying for extensions which were granted."However, along the way, before the expiry of his lease in 1989, he applied to KCC to have the same transferred to M&D Timber Merchants and Transporters Limited," the judgment states.

It is stated that the council, at its development committee meeting on June 22, 1989, granted the transfer subject to the payment of a fee of sh1m within 30 days from July 1, 1989 and subject to fresh terms of a fresh premium and ground rent. However, facts indicated that the payment as prescribed was never fulfilled and no fresh terms were levied. "As a result, no land title was secured by M&D Merchants and Transporters Limited. There is no evidence on record that when the lease expired, the appellant applied for extension," Justice Gashirabakye stated.

He added, "It is trite law that once a lease expires, the land automatically reverts to the lesser. In my view, the trial judge exhaustively addressed this issue".

POWERS TO REALLOCATE LAND

Justice Zeija had stated that it was clear that the lease term held by Hussein Abdi had expired and the same was never extended.

"The respondent sat on their rights, lost all its interest in the land and the suit land automatically reverted to the controlling authority, then KCC, which has the powers to reallocate it to another party," Zeija wrote in the 2022 judgment.

Court facts further state that upon meeting the requirements for the allocation of the suite land property, including the payment of the premium and ground rent, Hwan Sung Limited was issued with a certificate of title for the initial term of five years from August 1, 1996, which sparked off the beginning of a long-standing dispute.

Counsel Kintu Nteza represented the appellant, while Hwan Sung Limited was represented by two lawyers, George Omunyokol and Albert Byamugisha, while Kampala District Land Board was represented by Alex Kaboyo.

NO EVIDENCE OF FRAUD

In upholding the prior ruling of the High Court, the Court of Appeal cited that it had been found that Hwan Sung Limited lawfully applied for and was granted a title to the suit land and no evidence of fraud was proved by M&D Timber Merchants and Transporters Limited.

Hwan Sung Limited applied for the suit land in 1995 for establishing a fish processing and cold warehousing facility and the KCC's Planning and Land Management Committee, which was responsible for land allocation then, considered the application.

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