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Uganda Supreme Court reasserts constitutional right to protection from deprivation of property

Uganda National Roads Authority Vs. Irumba Asumani & Peter Magelah, Supreme Court Constitutional Appeal No.2 of 2014

The Supreme Court has confirmed the sanctity of property rights under the Constitution.

Article 26 of the Constitution on freedom from deprivation of property provides for prompt payment of fair and adequate compensation prior to the State's compulsory acquisition of any property. The Court ruled that the Land Acquisition Act (Cap 226) is unconstitutional in so far as it provided for the compulsory acquisition of property before the payment of compensation to the owner.

Background

The Government of Uganda commissioned a project to upgrade the Hoima-Kaiso-Tonya road, leading to Uganda's oil fields in the Albertine Graben. Acting under the Land Acquisition Act, the Government compulsorily acquired the project land and the Uganda National Roads Authority ("UNRA") took possession before payment of compensation to the owners.

The respondents challenged the constitutionality of the Land Acquisition Act that permitted the Government to compulsorily acquire land before payment of compensation. Under Article 26(2) of the Constitution, no person can be compulsorily deprived of property without prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.

The Constitutional Court found the Land Acquisition Act unconstitutional to the extent of its inconsistency with Article 26(2) of the Constitution in so far as it did not provide for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of any property by the State.

UNRA appealed to the Supreme Court and sought to argue, among others, that Article 26 was not a non-derogable right and that in certain circumstances, the State would be entitled to compulsorily acquire property before payment of compensation for instance in situations of natural

disasters, emergencies or in the interest of public good.

The Supreme Court Decision

The Supreme Court upheld the Constitutional Court decision that the Land Acquisition Act was inconsistent with Article 26 of the Constitution and therefore unconstitutional. The Supreme Court held further that whereas Article 26 was not among the non-derogable rights, this does not give powers to Government to compulsorily acquire people's land without prior payment, and that such planned Government projects do not fall under the exceptions of disasters and emergencies.

Relevance

This decision could not have come at a better time, following the passing of the Public Private Partnerships Act 2015 and what may well be a boom in Uganda's infrastructure development. For property owners, developers and lenders taking security on property, the Supreme Court confirmation on property rights is good news.

For further information on this and other legal issues, please contact:

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