

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 113 OF 2020

5 **1. HEZEKIAH MUKIIBI**
2. JONATHAN MAGALA..... APPELLANT

VERSUS

THE COMMISSIONER LAND REGISTRATION.....RESPONDENT

10 **Coram: Hon. Mr. Justice Muzamiru M. Kibeedi, JA.**
Hon. Mr. Justice Christopher Gashirabake, JA.
Hon. Mr. Justice Oscar John Kihika, JA.

15 *[An appeal from the Ruling and orders of the High Court, Civil Division (Hon. Justice Musa Ssekaana) dated 22nd May, 2020 in Miscellaneous Cause No. 98 of 2019].*

JUDGMENT OF THE COURT

20 This is an appeal from the decision of Hon. Musa Ssekaana, J in High Court (Civil Division) Miscellaneous Cause No. 98 of 2019 dated 22nd May, 2020 in which a ruling was entered in favour of the respondent.

The background of this appeal is as follows: -

25 The office of the Commissioner Land Registration received a complaint from Winnie Tugume to the effect that in 1998 she bought the land as comprised in Kyadondo Block 185 Plot 385 from Tefiro Doffe Kisasonkole, a son and the Administrator of the estate of the Late Kupuliyano Lufo Bisase Kisasonkole. The

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purchase was done in the presence of Nantongo Daisy (Daughter to Tefiro), Ssegawa Ruthmans (Son to Tefiro) and Lule Kamoga (Estates Manager). Hezekiah Mukiibi, the 1st appellant herein, signed on the purchase agreement as a witness. Upon the said purchase, Winnie Tugume was given all the documents including signed transfer forms by the four administrators of the estate of the Late Kupuliyano Bisase Kisosonkole. Hezekiah Mukiibi was assigned the duty to survey and process the Certificate of Title for Winnie Tugume. However, on demanding for the title from him, he claimed that the said Land as then comprised in Kyadondo Block 185 Plot 385 was his having obtained the same from Jeremiah Muniyigwa.

The Register for the said land was retrieved by the Commissioner Land Registration and upon perusal, it showed that the suit land as formerly comprised in Kyadondo Block 185 Plot 385 together with Plot 386 were transferred in the names of Hezekiah Mukiibi by a transfer dated the 3rd November, 1981 signed by Jeremiah Muniyigwa. Upon transfer of the said land, the 1st appellant sub-divided plots 8151, 8152, 8153 and 8154 under instrument No. KLA 464365 of 30th July 2010 where upon Plot 8152 was transferred to Magala Jonathan, the 2nd appellant, vide Instrument No. KLA 492737 on 25th March, 2011.

Summons under Section 165 of the Registration of Titles Act dated 30th August, 2018 were issued to the 1st and 2nd appellant and Mercantile Bank but were objected to by the lawyers of the 1st appellant. By another letter dated the 28th September, 2018 the appellants were requested to avail the information requested from them by the office of the Commissioner Land Registration as per summons dated the 30th August, 2018 but no response was received. The office of the Commissioner Land Registration issued a Notice of intention to effect changes in the register dated 14th December 2018 to the appellants and Mercantile bank

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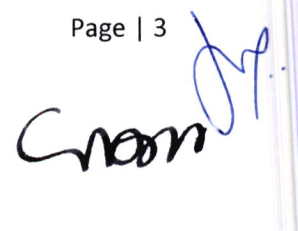

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wherein they were briefly notified of the complaint against them. The notice of intention to effect changes in the register was duly posted by registered mail to the applicants and Mercantile Bank on their registered Postal Address as per postage number M-UGKL1218161813, M-UGKL1218161808 and MUGKL-1218161810.

5 In the above notice, the parties were invited for a public hearing which was to be held on the 17th January, 2019 at the office of the Commissioner for Land Registration in respect of the complaint that had been lodged to it by Winnie Tugume. Despite having been served and invited for a public hearing to raise their objection to the Notice, none of the parties invited attended the public hearing nor
10 submitted any response or reply. At the hearing of the complainant Winnie Tugume adduced an agreement pursuant of which she purchased the said land for Tefiro Doffe Bisase Kisosonkole which was duly signed by the said Hezekiah Mukiibias one of the witnesses. The Commissioner Land Registration amended the register and cancelled the appellants' registration as proprietors of all the land
15 known as and comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154.

Due to the above changes the appellants filed an application for judicial review in the High Court (Civil Division) seeking for the following orders: -

(a) an order of *certiorari* calling the record of proceedings and the decision of
20 the 1st respondent arbitrarily and illegally amending the register and cancelling the appellants' registration as proprietors of all the land known as and comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154,



(b) a consequential order requiring the 1st appellant's titles to all the land comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154 to be reinstated,

(c) a permanent injunction restraining the 1st respondent from illegally cancelling or otherwise interfering with the appellants' ownership, registration and proprietorship of all the land known as and comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154,

(d) a declaration that the applicants are the duly registered proprietors in respect of all that land known as and comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154,

(e) a declaration that the respondents impugned actions are in contempt of court and

(f) an order requiring the respondent to appropriately compensate the appellants' in general and exemplary damages.

15 The learned Trial Judge dismissed the application with costs.

The appellants being dissatisfied with the decision and orders of the learned Trial Judge appealed to this Court on the following grounds: -

1. *The learned Trial Judge erred in law and fact when he found and held that the respondent accorded the appellants a hearing before cancelling their Certificates of Titles to the land comprised in Kyadondo Block 185 Plot 385 (formerly Block 185 Plots Numbers 8151, 8152, 8153 and 8154) (the suit land) Land at Namugongo.*

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2. *The learned Trial Judge erred in law and fact when he held and found that the respondent effectively served on the appellants the notice of intention to cancel their certificates of titles to the suit land dated 14th December 2019.*
3. *The learned Trial Judge erred in law and fact when he failed/omitted to find and hold that the respondent's cancellation of the applicants' certificate of title was founded on or based on fraud.*
4. *The learned Trial Judge erred in law and fact when he failed/omitted to find and hold that the cancellation of the applicants Certificates of title to the suit land was arbitrary and unreasonable.*
5. *The learned Trial Judge erred in law and fact when he upheld the cancellation of the 2nd appellant's Certificate of title when no complaint has ever been raised against him.*
6. *The learned Trial Judge erred in law and fact when he held that the cancellation of the appellants' Certificates of titles was based on the respondent's notices and summons of 30th August, 2018 when it was in fact based on the notice dated 14th December, 2018.*
7. *The learned Trial Judge erred in law and fact when he considered and based his ruling on the inadmissible affidavit of Mr. Haruna Goloba.*
8. *The learned Trial Judge erred in law and fact when he ruled against the appellants for not rebutting allegations in an affidavit in rejoinder when he himself barred them from filing one.*
9. *The learned Trial Judge erred in law and fact when he failed to find and hold sub-judice operated to render the respondent's actions of cancellation of the appellants certificates of title illegal.*

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10. *The learned Trial Judge erred in law and fact when he proceeded to determine the cause without first finding the respondent in contempt of court and cancelling all the changes made to the register in respect of the suit and when the cause was still pending in court.*

5 11. *The learned Trial Judge erred in law and fact when he failed to properly evaluate the evidence on record and thereby came to wrong conclusion/decisions and order.*

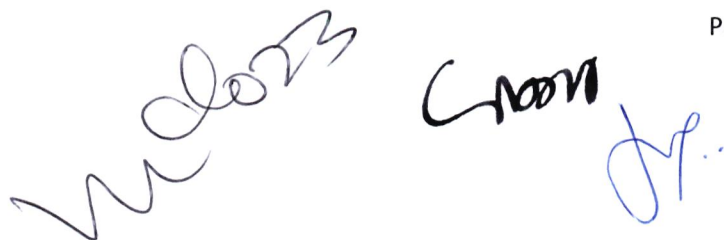
Representations

10 At the hearing of this appeal *Mr. Leister Kaganzi*, learned counsel, appeared for the appellants. The respondent was neither in Court nor was he represented. The appellants sought and were granted leave to adopt their conferencing notes as their written submissions. The respondent sought and was granted leave to file written submissions. It is on the basis of the written submissions that this appeal has been determined.

15 **Appellants' Case**

Counsel submitted and argued grounds 3, 4 and 5 together. It was submitted that, the Commissioner for Land Registration or a Registrar of Titles does not have powers to cancel a Certificate of Title on grounds of fraud. He/she only has powers to cancel a Certificate of Title for two reasons; "error" and "illegalities" that do not require the rigors of a full trial where fraud would be established before a title is impeached under Section 91 of the Land Act, Cap 227 (as amended). The power to cancel a title where fraud is alleged, is vested in the High Court under Section 91 of the Land Act, Cap. 227 (as amended) and Section 177 of the Registration of Titles Act, Cap 230. It was contended that the respondent's decision to issue a Notice of cancellation of their Certificate of Title and reinstating

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Kyadondo Block 185 Plot 385 was illegal, irrational and beset with glaring abuse of the rules of natural justice and overt procedural impropriety. The decision did not comply with Section 91 of the Land Act, Cap 227 (as amended) under which the Respondent purported to have issued the impugned notice and amended the register, for the above proposition Counsel relied on *Hilda Wilson Namusoke & others vs Owalla's Home Investment Trust Ltd & the Commissioner for Land Registration Supreme Court Civil Appeal No. 15 of 2017*.

It was submitted that, the reasons given by the respondent to cancel the appellant's title of the suit land could only be termed as fraud and did not qualify as "errors". It was contended that, the learned Trial Judge erred when he failed to find that the respondent's cancellation of the appellants' certificates of title was founded on or based on fraud. The Trial Judge omitted and or failed to determine the question of whether the reasons given by the respondent for cancellation of the appellants' titles to the suit land were valid and as such arrived at the wrong conclusion that the respondent's decision was premised on errors. Further he failed to find that the cancellation of the appellants' certificate of titles to the suit land was arbitrary and unreasonable in the circumstances of the case. They were without rational basis and were not guided by reason.

In respect of grounds 1 and 2, it was contended that, the appellants were never accorded a hearing before cancellation of their certificates of title to the suit land. It was submitted that when the appellants received summons from the Commissioner for Land Registration, they responded via their then lawyers Kampala Associated Advocates and on the 20th September, 2018, they answered the summons and appeared before Senior Registrar of Titles Ms. Aisha Kabira. None of the other summoned persons appeared at all. It was argued that no hearing took place at all and no minutes/certified proceedings of the hearing was



produced by the respondent at all. It was contended that the appellants were taken by surprise when they received a Notice of cancellation of their certificates of Title having been summoned on 14th December 2018 via the registered mail. It was contended that, the respondent should have argued that, this type of service was not effective service and it was the respondent's intention to stifle the appellants' right to effective service and this was the reason why they missed the public hearing. The Trial Judge in determining the aspect of effective service, relied on Section 35 of the Interpretation Act and wrongly arrived at the conclusion that the Appellants were deemed to have been effectively served with the "Notice of intention to effect changes in the register".

Grounds 6 and 7 were abandoned by the appellants.

In respect of ground 8, it was submitted that the learned Trial Judge erred when he ruled against the appellants for not rebutting allegations in an affidavit in rejoinder yet he had barred them from filing one. It was submitted that, it was not lawful for the learned Trial Judge to blame the appellants for not rebutting key allegations set out in the respondent's affidavit, he was the one who erroneously stooped or denied the appellants the right to respond to the said allegations in the affidavit, thus arrived at a wrong conclusion.

In respect of ground 9 and 10, it was contended that, the learned trial Judge erred when he failed to find and hold that rule of *sub-judice* operated in the circumstances of the case to render the respondent's actions of cancellation of the appellant's Certificate of Titles illegal, and contemptuous of the listed court cases/proceeding of Court.

It was submitted that, the appellants through their advocates brought it to the attention of the respondent that there were several Court matters touching on issues

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relating to the suit land and these matters were ongoing and as such the respondent's action of cancelling the appellant's Certificates of Titles directly interfered with the independence of the judiciary in determining Court matters. It was unconstitutional and illegal in as far as, it directly interfered with the proper
5 administration of justice.


In respect of ground 11, it was contended that, the learned Trial Judge, failed to properly evaluate all the evidence on record and as such arrived at a wrong decision. Counsel prayed that Court re-evaluates all the evidence on record.

Counsel asked Court to allow the appeal, set aside the findings and orders of the
10 Trial Court and award the appellants costs of the appeal.

Respondent's reply

In their written reply to grounds 3, 4, and 5, it was submitted for the respondent that the learned Trial Judge was right in absence of evidence of fraud to hold that the Commissioner for Land Registration exercised the powers vested in him/her
15 under Section 91 of the Act (as amended) to cancel the Certificate based on error. The learned Trial Judge in his decision clearly stated and agreed that a Commissioner for Land Registration cannot cancel a land title due to fraud, he clearly made a finding that in the present case, fraud had not been alluded to by the decision of the respondent as the basis for the cancellation and neither did the first
20 appellant testify or state that he got registered fraudulently on the Certificate of Title.

It was further submitted that, the learned Trial Judge noted that fraud was not alluded to the application for Judicial Review, more so no inference was made that the respondent based his/her on fraud but rather the decision was to the effect that



the appellant erroneously and without a claim of right transferred the land into his names hence the Commissioner exercised the powers premised on errors.

It was contended that, the appellant's arguments that the Certificates of Title were cancelled based on fraud have no legal justification and as such, the learned Trial Judge was right in making a finding that in absence of any specific particulars of fraud, Court could not make any finding to that effect as it would be going into the merits of the case which is least appropriate in Judicial review matters.

It was further submitted, that the respondent's decision to cancel the Certificates of titles was not arbitrary and unreasonable as contended by the appellants. It was submitted that the respondent has the powers to cancel a Certificate of Title on ground of error or illegality as per Section 91 of the land Act. For the above proposition Counsel cited *Hilda Wilson Namusoke & Others vs. Owalla's Home Investment Trust Ltd and the Commissioner for Land Registration Supreme Court Civil Appeal No. 15 of 2017*.

In respect of ground 1 and 2, it was submitted that the appellant never notified the respondent about a change of address more so the evidence contained in the 1st appellant's affidavit never alluded to any fact that the said address had since changed. Even the letter written by the said lawyers never intimated that the address of service of any further correspondences should be though them.

Consequently, the summons of 30th August 2018 to the applicant had to be addressed to their addresses on the Certificate of Title and they never disputed ever receiving the notices.

Counsel further submitted that, the learned Trial Judge was right when he held that there was no evidence of the respondent not having received the process through their addresses. The appellants' contention of not having received the notices was

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submitted at the bar that the Post Office Box Number registered had ceased. However, this was not stated in 1st appellant's affidavit, and as such the respondent should not be faulted for sending the notice of intention to effect changes in the Register on the registered address on the Certificate of Title.

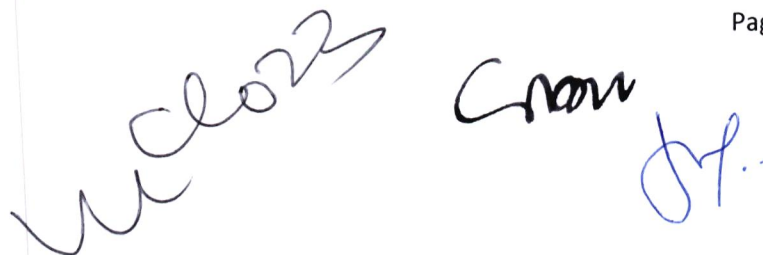
5 In this regard the learned Trial Judge was right when he held that it is the duty of every person whose interest is registered in any land to ensure the address availed is forever active, for purposes of receiving communication from the Commissioner Lands Registration.

10 It was therefore submitted that the appellants were dully and effectively served with the process that led to effecting changes in the Register and it was unsafe for the trial court to base on counsel's evidence from the bar which was not supported by the 1st appellant's evidence in the affidavit before court to believe otherwise that there was no service.

15 In respect of ground 8, it was contended by the appellants that the learned Trial Judge erred when he ruled against the appellants for not rebutting allegations in affidavit in rejoinder when he himself barred them from filing one.

20 In reply it was submitted that the appellant was never denied an opportunity to file the affidavit in rejoinder as claimed, in fact, the appellant was directed to file the affidavit in rejoinder by 23rd May 2019. The Trial Judge who directed that the affidavit in rejoinder be filed and provided time lines when to file one cannot be castigated that he rejected the same. Failure to file the affidavit was an omission of the appellants and its very unfair to castigate the trial court on that basis.

25 In regard to ground 9 and 10 it was the appellants' contention that, the learned Trial Judge erred when he failed to find and hold that rule of *sub-judice* operated in the circumstances of the case. Counsel for the respondent argued that, the learned

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Trial Judge clearly stated that *sub-judice* rule is not one of the grounds for judicial review.

It was submitted that, a decision maker cannot be restrained merely because there are pending matters in Court. It was argued that, if a party is likely to be prejudiced by the decision of the Commissioner Land Registration, it would be prudent to seek a temporary injunction. Court made a finding that the Office of the Commissioner Land Registration would not execute their functions mandated under Land Act or the Registration of Titles Act as all fraudsters would plead *sub-judice* in order to maintain the status quo or curtail the Powers of the Commissioner Land Registration. Counsel cited *Cecil David Edward Hugh vs. the Attorney General MSC.266/2013*, where it was held that, there was three grounds for judicial review namely; Illegality, irrationality and Procedural Impropriety. Court went on to state in this case that judicial review is not concerned with the decision itself per-se but the decision-making process.

Therefore, the issue of *sub-judice* is clearly out of the scope of judicial review and the trial court had no basis of holding the respondent in contempt.

It was further submitted that the learned Trial Judge carefully evaluated all the evidence on record and rightly arrived at a right decision. Counsel asked court to dismiss the appeal as it lacks merit and to uphold the decision of the learned Trial Judge.

Resolution

We have carefully read the record of appeal and written arguments of the parties. We have also read the authorities cited and relied upon by counsel. This is a first appeal and, as such, this Court is required to re-evaluate the evidence and come up with its own inferences on issues of law and fact. See: Rule 30 (1) of the Rules of

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this Court, *Fr. Narsensio Begumisa and 3 others vs Eric Tibebaga, Supreme Court Civil No 17 of 2002 and Ephraim Ongom Odongo vs Francis Binoga Donge Supreme Court Civil Appeal No. 10 of 2008* (unreported).

We shall keep the above principles in mind while resolving this appeal.

- 5 The facts of this case as we comprehend them are that, the land in question used to belong to the people who died in an accident, “the Kisosonkole family”.

The surveyor who is the first appellant illegally registered himself as proprietor on the Certificates of Title of land formerly comprised in Kyadondo Block 185 Plot 385 together with Plot 386. He later sub-divided the land into plots 8151, 8152, 10 8153 & 8154 under Instrument No. KLA 464365 on 30th July, 2010 whereupon Plot 8152 was transferred to Magala Jonathan, the 2nd appellant, vide Instrument No. KLA 492737 on 25th March, 2011.

The Commissioner Land Registration notified the appellants on the 30th day of August 2018 to appear before him and show cause why the Certificates of Title 15 should not be cancelled. The summons was sent by post to the Postal Address provided on the Certificate of Title. When the appellants received the summons, instead of appearing for the hearing, they gave the summons to their lawyers, Kyagaba & Otiina of Kampala Associated Advocates, who wrote a very legalized letter that was traverse and raised an issue that the matter was *sub-judice*.

20 Again on 14th December 2018, the Commissioner Land Registration summoned them through the same postal address but they did not appear. He went ahead to cancel their names off the Certificates of Title and notified them of the cancellation.

Instead of the appellants going by way of ordinary suit, they proceeded by way of judicial review challenging the decision of the Commissioner Land Registration.

So the main thrust for challenging the decision of the Commissioner Land Registration is that the decision violated the rules of natural justice, that is the right to be heard, because the summons dated 14th December, 2018 were allegedly not served on the appellants and that the matter was heard ex-parte.

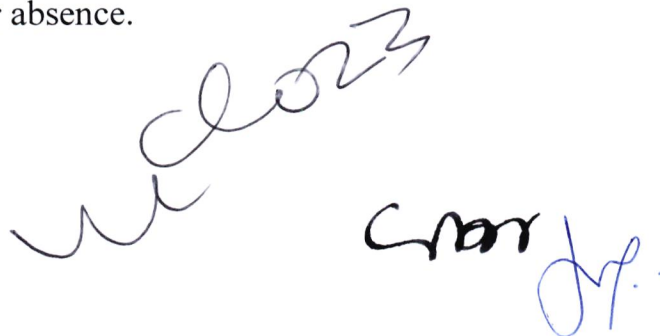
Secondly, that the matter was *sub-judice*. It was the appellants' contention that there were a number of people included on the land title and, as such, the Commissioner Land Registration was precluded from hearing administrative matters; instead, it was supposed to be before Court and several other reasons that are frivolous.

The main questions for determination are:

1. *Whether the appellants were denied a right to be heard.*
2. *Whether the matter was sub-judice*

Issue 1.

It was the appellant's contention that, they were not properly/effectively served by the respondent. The learned Trial Judge found that they had been properly served because they had been served, as they had been served at the address provided on the Certificate of Title. When the appellants were first summoned on 30th August 2018, they responded through their advocates, Kyagaba & Otatiina of Kampala Associated Advocates. When they were again summoned through the same Postal Address on 18th December, 2018, they failed to appear for the hearing and the matter was determined in their absence.



The learned Trial Judge also noted that the 1st appellant did not state in his affidavit that the said postal address changed.

While analyzing this issue, the learned Trial Judge observed and found as follows:

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5 *“The applicant does not state in his affidavit that the said address had since changed. There was no notification of change of address to that of the advocate. At least even the letter written by the said lawyers does not intimate that the address of service of any further correspondences should be through them. It could be very true that the said law firm was only*
10 *instructed to respond to the summons of 30th August, 2018 and the instructions ended on that day.*

15 *It bears emphasis, that the summons of 30th August 2018 to the applicant had been addressed to their addresses on the certificate of title. They do not dispute ever receiving the same and at least they responded through their Lawyers-Kampala Associate Advocates.*

20 *It is the applicant’s counsel who has decided to submit from the bar that ‘the box number registered in 1981 is certainly in disuse as the applicant has ceased to rent or pay for it’. The applicants did not state that in their affidavit evidence and it would appear they were comfortable with the said address. In absence of any evidence to the contrary, the Commissioner Land Registration should not be faulted for sending the “Notice of Intention to Effect Changes in the Register” on registered address on the certificate of title.*

25 *It is a duty of every person whose interest is registered in any land with the land office, to ensure that the address availed is forever active for purposes*

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of receiving communications from the Commissioner Land Registration. This court does not want to create an extra burden on that office except for such persons who have not provided any address of purposes of sending correspondences or whose mails have been returned by post.

5 *The applicant's counsel also contended that the service was not effective by stating that effective sending is not the same as effective receiving. The law cited by counsel Section 202 of the Registration of the Title Act provides for alternatives if the first sent mail is returned. If the registered mail is not returned the service is deemed effective.*

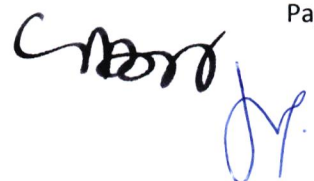
10 *Section 35 of the Interpretation Act provides that;*

Where any Act authorizes or requires any document to be served by post, the service shall be deemed to be effected by properly addressing, prepaying and positing by registered post a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter
15 *would be delivered in the ordinary course of the post”.*

We entirely agree with the above analysis and finding of the learned Trial Judge.

On the issue of the right to be heard. The right to be heard does not mean that a matter cannot proceed in the absence of the party concerned. The right to be heard is sufficiently availed to the party when he or she is availed an opportunity to be
20 heard.

The right to be heard is limited to giving a party an opportunity to be heard. Once a party is given an opportunity to be heard and fails to appear before a quasi-judicial body or a judicial body, such party cannot plead that the right to be heard was violated.



The rules of natural justice are embedded in the constitution under Articles 28, 42 and 44 which guarantee every person a right to a fair hearing before an administrative body.

5 According to Halsbury's Laws of England, 5th Edition, 2010 Vol. 61 para 639, it is stated: -

10 *"The rule that no person shall be condemned unless that person has been given prior notice of the allegations against him/her and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adopted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies or required by statute or contract, to conduct themselves in a manner analogous to courts".*

15 While determining the issue of the right to be heard the learned Trial Judge found as follows: -

"...The applicant never responded to the said affidavit evidence either by way of a supplementary affidavit or an affidavit in rejoinder.

20 *The applicant was expected to make his case before the Commissioner Land Registration by way of a statutory declaration in the summons of 30th August 2018 to explain how the said land was acquired by himself, but there is no such evidence. Instead there is a technical response by his counsel not alluding to any of the queries raised by the Commissioner Land Registration.*

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If a person's address on the certificate of title changed, it is incumbent on the person to provide the new address to the Commissioner Land Registration or avail the address upon which service can be effected. This was never done. The Commissioner Land Registration executed legal duties when he served the appellants on the address on the Certificate of Title. We find that this same address had been used earlier to serve the appellants. They had responded through their lawyers indicating that it was the correct address.

We find that the summons effected upon the appellants were effectively served through the postal address provided on the certificate of title.

10 **Issue 2.**

Whether the matter was *sub-judice*

The term '*sub-judice*' is defined in Black's Law Dictionary 9th Edition as: -

"Before the Court of Judge for determination".

The purpose of the *sub-judice* rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of *res sub-judice* must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before

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court of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.

The essential conditions for bringing in the operation of the doctrine of *res sub-judice* are: -

- 5 1. *The matter in issue in the subsequent suit is directly and substantially in issue in the previously instituted suit.*
2. *The parties in both suits are same, either directly or indirectly and,*
3. *The court in which the first suit is instituted, is a court of having jurisdiction or competent to grant the relief claimed in the subsequently instituted suit.*

10 The learned Trial Judge found and held as follows: -

“sub-judice rule is not one of the grounds for judicial review. The decision maker cannot be restrained merely because there are pending matters in court. If a party is likely to be prejudiced by the decision of commissioner Land Registration, it would be prudent to seek a temporary injunction.

15 *Otherwise, the office the Commissioner Land Registration would not execute their functions mandated under the Land Act or the Registration of Titles Act. All fraudsters would file any hopeless case and plead sub-judice in order to maintain the status quo or curtail the powers of Commissioner Land Registration”.*

20 We agree with the learned Trial Judge, the subject of *sub-judice* does not apply. If the appellant had wanted to stop the proceedings before the Commission Land Registration, they would have served a court order of injunction, of which they did not. Yet they were aware by August the same year that there were on going proceedings before the Commissioner Land Registration.



All in all, we find no merit in this appeal. We agree entirely with the findings of fact and law of the learned Trial Judge and uphold them.

We also find that the Memorandum of Appeal offended the Rules of this Court.

Rule 86 of the Court of Appeal Rules provides as follows: -

5 “86. Contents of memorandum of appeal.

10 (1) *A Memorandum of Appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the court to make.*

 (2) *The grounds of objection shall be numbered consecutively*

 (3) *A Memorandum of Appeal shall be substantially in Form F in the First Schedule to these Rules and shall be signed by or on behalf of the appellant”.*

15 The grounds were not precise and were argumentative

As indicated above, the issues to be determined were few and we would on that account alone have struck out the memorandum of appeal with costs. We did not as we considered that in the interest of justice issues raised be determined on merit.

All in all, the appeal fails with no merit whatsoever with costs to the respondent.

20 The orders of the High Court are hereby upheld.

It is so ordered.

Dated at Kampala this17th..... day ofOctober.....2023.

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Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL

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Christopher Gashirabake
JUSTICE OF APPEAL

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