

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO.153 OF 2015

A. DEAN & COMPANY LIMITED:::::::::::::::::::::::::::::::::APPELLANT

VERSUS

KAMPALA CAPITAL CITY AUTHORITY:::::::::::::::::::::::::RESPONDENT

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ

HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

HON. JUSTICE STEPHEN MUSOTA, JA

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

This is an appeal against the Ruling of the High Court at Nakawa by the Hon. Mr. Justice Masalu Musene given on 24th January, 2015 in Miscellaneous Cause No.21 of 2014 A. Dean & Company Limited versus Kampala Capital City Authority.

Background of the Appeal

The Respondent is the successor in title to the assets of the Kampala City Council (KCC). KCC is the registered proprietor of freehold interest in the land comprised in Freehold Register Volume 480, Folio 3 Plot 52 Port Bell Road, Kiswa Nakawa Division Kampala measuring 0.092 hectares. By a lease dated 26th June, 2008 KCC leased the said land, to Nowomugisha Sadrack Nzaire for an initial term of 5 years from 12th May 2008 or a period from 12th May, 2008 to the date of issue by the lessor KCC of an Occupation Permit for the Development

whichever was shorter. The development obligation in the lease required the lessee to carry out the development of a Hostel and Apartments on the land.

5 The initial term of the lease was extendable to 49 years (the full term) subject to payment of rent, substantial performance by the lessee or no material breach of the covenants by the lessee. On 2nd May 2011 the Kampala District Land Board under Minute No. KDLB (Addendum) 8/4.1/2011 of its meeting held on the 27th April, 2011 wrote to the lessee Nowomugisha Sadrack Nzaire granting him
10 consent to transfer the lease.

Subsequently Nzaire sold and transferred the said land to the Appellant (A. Dean & Company Limited) who then was registered as proprietor of the suit lease on the 15th March 2012 under instrument No.464650. The Appellant in 2012, following this transfer, submitted
15 architectural drawings and building plans to the Respondent for approval.

On 18th February, 2013 the Appellant applied to the Respondent for extension of the lease to full term to enable the applicant to access funding from financiers by 28th February, 2013. In a letter dated 22nd
20 February, 2013 ref DLA/KCCA/1401/08 the Respondent's Director Legal Affairs responded to the applicant's request for extension of the lease declining the request and stating that the controlling authority over the land was the Kampala District Land Board and not the Respondent. At this time the lease was due to expire on 11th May
25 2013.

On 6th May 2013 the Appellant again wrote to the Respondent complaining that their building plans had neither been approved nor rejected by the planning department of the Respondent.

On 18th February, 2014 the Respondent wrote to inform Nzaire that
5 the Contracts Committee of the Respondent at its 128th meeting terminated the lease on grounds that he had not fulfilled development obligations as stipulated in the lease agreement and that the conditional period of five years expired and he had not applied for renewal of the lease. On 25th February, 2014 the applicant
10 wrote to the Respondent requesting it to rescind the decision to terminate the lease. On 10th March, 2014 the Respondent director of Legal Affairs wrote to the Respondent advising that the decision to terminate was not taken by the executive Director but rather by the Contracts Committee of KCCA.

15 The Appellant took the view that the acts of the Respondent in refusing to extend the Appellant's lease or dealing with the applicant's application for approval of its drawings to enable it comply with the development conditions and thereafter terminating the lease on the grounds of expiry of lease and non-compliance with
20 the development conditions were irrational. Further the Appellant felt that by denying it the opportunity to be heard prior to and on the grounds upon which termination of the lease was done was in breach of the Appellant's constitutional right to a fair hearing and was contrary to the principles of natural justice. The Appellant felt that
25 the acts of the Respondent were irrational, illegal and tainted with

procedural impropriety and that the respondent's decision to terminate the lease ought to be quashed.

As result the appellant decided to lodge High Court Miscellaneous Cause No.21 of 2014 for Judicial Review, which it filed in High Court of Uganda at Nakawa on 5th My 2014 by way of Notice of Motion supported by affidavit of Wycliff Mulindwa a director in the Appellant company. In the application the appellant sought and prayed for the following orders;

- I. *An order of certiorari to quash the decisions of the respondent not to extend the applicant's lease on the land comprised in Plot 52 Port Bell Road, Kampala.*
- II. *An order of mandamus requiring the respondent to extend or review the applicant's said lease on the aforesaid land,*
- III. *An injunction to restrain the respondent from leasing the said land to any other person.*

On 25th June, 2014 the Respondent filed an affidavit in reply sworn by Caleb Mugisha stating among others as follows;

"...4. That in 2008 the defunct Kampala City Council granted a lease over the aforesaid land to Sedrac Nzaire for an initial term of 5 years.

5. That under clause 3.3.3, of the lease agreement, the developer was obliged to erect a hostel and apartments as per the approved plans and specifications of the planning authority, and the said developments were to be completed for occupation and use to the

satisfaction of the lessor during the conditional period, in any case not later than the 30th day of May, 2013. Find attached a copy of the lease agreement marked "B".

5 6. That the said conditional period expired before the developer could erect any structures on site, and instead he was using the land as a washing bay in breach of the lease agreement.

7. That further, the lessee was obliged to pay to the controlling authority annual ground rent reserved at UGX 1,800,000/= (One Million Eight Hundred Thousand shillings only) but the said
10 developer defaulted in paying the said amount.

8. That contrary to clause 3.7 of the lease agreement, the lessee assigned the premises within the conditional period without prior written consent of the Respondent herein which is the controlling Authority.

15 9. That the Respondent herein secured conversion of the said land from leasehold to freehold in 2007 and it was therefore not possible for the Kampala District Land Board to grant an extension of lease on land where it did not have interest.

20 10. That the alleged letter of the Director Legal Affairs, DLA/KCCA/1401/08 was inadvertent since the KDLB could not deal in land over which KCCA had freehold interest.

11. That the Respondent did not at any time approve development plans by the Applicant in respect of the land in issue.

12. That I know by virtue of my training as an advocate that by operation of law, once a lease expires, it automatically reverts to the controlling authority without the applicant necessarily being granted the right to be heard.

5 13. That I also know that unless varied, covenants under a lease agreement must be honored and it does not suffice for the lessee to express interest in honoring express covenants under the lease agreement.

10 14, That the Applicant is not known to the Respondent herein and there is no basis upon which the Respondent can be moved to reconsider its decision in the Applicant's favor.

15. That I swear this affidavit in reply to the application herein.

16. That whatever I have stated herein is true and correct to the best of my knowledge and belief....”

15 The application was heard interparty by way of written submissions as directed by the court on 20th October, 2014. Appellant filed their submissions in the High Court on 20th November, 2014. The Respondent filed their submissions in the High Court on 18th December, 2014. The Appellant filed submissions in rejoinder on 30th
20 December, 2014.

On 25th June 2015, Masalu Musene J. delivered a ruling on the matter stating among others that;

“...In reply, Counsel for the Respondent submitted that the fact that the Applicant admits the breaches that led to the non-

renewal of the lease and more importantly in light of the fact that this is purely a contractual matter, prayed that the Application be disallowed in light with the decision in *Uganda Taxi Operators and Drivers Association vs Kampala Capital City Authority and the Executive Director Misc. Application 137 of 2011*.

I agree with the submissions of counsel for the Respondent in this regard. In any case, I have already ruled that this was a case of breach of contract which should be by way of ordinary plaint and not Judicial Review.

I therefore decline to grant the reliefs sought and instead advise the Applicant to proceed by way of ordinary suit. Each party to meet their own costs.”

The appellant was dissatisfied with the decision of the High Court and lodged this appeal.

The Appeal

In the Memorandum of Appeal, the Appellant raises the following grounds of Appeal;

1. The learned trial Judge erred in law and in fact when he held that the appellant which was the registered proprietor of the lease of the suit land was not entitled to a hearing on whether the lease term would be extended.

2. The Learned Trial Judge erred in law and in fact when he failed to find that the appellant as transferee of the lease had priority of estate with the respondent in respect of the

suit land and instead held that the appellant was a stranger with the lease.

5 **3. The Learned trial Judge erred in law and in fact when he held that the appellant which was registered as proprietor of the leasehold suit land as transferee and had been in possession thereof with the knowledge of the respondent was not entitled to apply for judicial review of the respondent's decision not to extend the lease.**

10 **4. The learned trial judge erred in law and in fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion that the appellant was a stranger to the lease.**

The Appellant proposes that this Court grants orders that;

a. The appeal be allowed.

15 **b. The ruling of the High Court be set aside.**

c. An order of certiorari to quash the decision of the Respondent not to extend the Appellant lease on land comprised in Plot 52 Port Bell Road.

20 **d. The respondent pays costs of this appeal and in the High Court.**

Representations/appearances

At the hearing of the Appeal, Mr. Mpumwire Abraham Dalton appeared for the Appellant. Mr. Dennis Byaruhanga appeared for the Respondent.

- 5 The parties informed court that they had agreed to maintain *status quo* of the suit land and proceed with the appeal. Following this consent of the parties, this court ordered that the *status quo* be maintained and that parties file their written submissions with the Judgment of the Court to be on Notice.
- 10 The appellant had already filed submissions on 26th August, 2015. The respondent filed on 23rd November, 2022. The appellant did not file submissions in rejoinder.

In the appellant's submissions he abandoned ground 2 of the appeal.

Duty of this court as a first appellate court.

- 15 This is a first Appeal arising from the decision of the High Court in exercise of its original Jurisdiction. It is therefore important for this court to remind itself of its duty as a first appellate court. The duty of a first appellate court is well settled. In the case of ***Kifamunte Henry v Uganda (Supreme Court Criminal Appeal No.10 of 1997)***
- 20 it was held that

“The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment

5 *appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanour, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See Pandya vs. R. (1957) E.A. 336 and” Okeno vs. Republic (1972) E.A. 32 Charles B. Bitwire ys Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at page 5.*

15 The duty of the Court of Appeal to re-appraise evidence on an appeal from the High Court in its original jurisdiction is set out in **rule 30 of the Court of Appeal Rules** as follows;

20 *“30(1) on any appeal from a decision of a High Court acting in the exercise of its original jurisdiction, the court may;*

(a) re-appraise the evidence and draw inference of fact,

(b) in its discretion, for sufficient reason take additional evidence or direct that additional evidence be taken by the trial Court or by commissioner;

(2)

5 ***(3)”***

I shall abide by this duty as I resolve the issues in this appeal.

Consideration of the Appeal

I have decided to determine the grounds of Appeal in the order in which they have been stated in the memorandum of appeal save for
10 ground 2 which was abandoned by the appellant.

Ground 1 The learned trial Judge erred in law and in fact when he held that the appellant which was the registered proprietor of the lease of the suit land was not entitled to a hearing on whether the lease term would be extended.

15 **Appellant's Submissions**

The Appellant submitted that it was never in dispute that the Appellant is the registered proprietor of the land comprised in LRV 3900 Folio 9 Plot 52 Port Bell Road, Kiswa Kampala which was a lease out of FRV 480 Folio 3. That the Respondent in the affidavit in
20 reply denied knowledge of the Appellant and stated that there is no basis upon which the Respondent could be moved to reconsider the decision. That the trial Judge agreed with the Respondent and found that the appellant had no relationship with the Respondent who by its own admission breached the lease terms.

That the trial Judge erred in both law and fact in reaching this conclusion. That the certificate of title clearly shows that the Appellant was a registered proprietor of the land upon cancellation of the names of Nowomugisha Sadrack Nzaire. That the Appellant
5 therefore was a successor in title to the lessee's title as can be ascertained from the register of titles. That furthermore the Appellant engaged in various correspondences with the Respondent in respect of the lease land and the Respondent responded by letter. That the correspondences clearly show that the Respondent was aware of the
10 Appellant's presence on the suit land, its interest to have the lease extended and the fact that the Appellant had submitted drawings for approval by the respondent's planning division. That fees for submitting the plans had been paid to the Respondent who accepted the payment. That the Respondent in a letter to the Appellant by the
15 Director of Legal Affairs advised the Appellant to wait until the operations of the Board formally resumed. That the Appellant replied this letter requesting for temporary construction permit or expeditious approval of the plan which was received by the Respondent on 6th May, 2013.

20 Learned counsel further submitted that under *Section 59 of the Registration of Titles Act Cap 230* a certificate of title is conclusive evidence that the person named in it as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or
25 interest or has that power.

Under section 92(2) of the Registration of Titles Act Cap 230 (the RTA) upon registration of the transfer, the estate and interest of the proprietor as set forth in the instrument or which he or she is entitled or able to transfer or dispose of under any power, with all rights powers and privileges belonging or appertaining thereto, shall pass to the transferee; and the transferee shall thereupon become the proprietor thereof. That accordingly the Appellant upon transfer, became proprietor of the lease.

Further that the lease agreement in clause 3.7.1 provided that assignment or parting possession or occupation of the premises would only be done with the lessor's prior consent in writing. That however, the effect of not obtaining this consent is that the lease becomes voidable at the option of the lessor and not *void ab initio* as was held in **Francis Butagira vs Deborah Namukasa SCCA No. 6 of 1989**.

Counsel for the Appellant further submitted that throughout the remainder of the 5-year conditional period after the above correspondence between the Appellant and the Respondent at no time did the Respondent seek to avoid the lease or deny or challenge the Appellant's title. That the Respondent continued to allow him to occupy the premises and did not reject the Appellant's building plans. Thus, by failing to avoid the lease it remained valid and the Appellant was the true lessee. That it therefore was immaterial whether the consent to transfer was not given by the Respondent as it did not avoid the lease thereafter.

The above-mentioned actions of the Respondent created a legitimate expectation in the Appellant. That in support of this submission and the Appellant's right to a fair hearing counsel relied on **Supreme Court Civil Appeal No.6 of 2013 Paul Kamya versus Kampala District Land Board and Nazarali Panjwani (Administrator of the Estate of Late Alirazak Panjwani)** at pages 19-20 where it was held that Judicial Review is a mechanism by which actions or decisions of a statutory or public body (decision-making authority) in the exercise of its functions are controlled to ensure that the decision-making authority acts within its power and complies with its duty to act fairly. That to qualify for judicial review, the decision must be of a statutory or public body and that it has affected some person or body of persons either by altering their rights or obligations which are enforceable by or against that person or body of persons in a private law; or by depriving that person or body of persons of the benefit or advantage. Counsel relied on **Council of Civil Service Unions Vs Minister for The Civil Service [1984] UKLHL 9** for this argument.

Further that failing to avoid the lease, receiving and deferring decision on the Appellants plans, requesting the Appellant to wait for the land board to resume its duties permitting the Appellant to enjoy undisturbed possession of the land, corresponding with the Appellant, the Respondent created in the Appellant a legitimate expectation that entitled the Appellant to a hearing. That legitimate expectation relates to a benefit or privilege in which the claimant has no right in private law. For this submission counsel for the Appellant

relied on the ***Supreme Court Civil Appeal No.6 of 2013 Paul Kamya versus Kampala District Land Board and Nazarali Panjwani (Administrator of the Estate of Late Alirazak Panjwani) page 23.***

- 5 That the same principle of legitimate expectation applied to the Appellant. The Appellant was entitled to a fair hearing and ought to have been afforded a hearing to explain why it had not performed the development conditions of the lease. That as such the learned trial Judge erred in law and in fact when he dismissed the Appellant's
10 ground that the Appellant had not been afforded a fair hearing.

Respondent's Submissions

- The respondent submits that the learned trial Judge properly found that the Appellant was not entitled to a hearing because he was a stranger to the lease. That the Appellant never produced any evidence
15 of lessor-lessee relationship with the Respondent and no evidence was adduced by the Appellant to show that the Respondent consented to the sale and transfer of the suit land as the rightful and legal owner, lessor. That the Respondent on the other hand proved that the Kampala District Land Board which purportedly consented
20 to the said transfer never had good title to pass in the suit property since the same belonged to the Respondent as a freehold. That no lease agreement was produced in court between the Appellant and the Respondent, in the absence of the lease between the Appellant and the Respondent creating rights and obligations. That the

appellant was not entitled to a hearing from the Respondent for lack of lessor-lessee relationship.

Determination of Ground 1

5 I have carefully considered the submissions of the parties. This ground of appeal relates to the right to a fair hearing. The Appellant claims it was entitled to be heard and the Respondent contends that because they had not signed a lease with the Appellant, they had no obligation to hear the Appellants before canceling the lease. That the
10 Appellant's predecessor in title having obtained consent to transfer from Kampala District Land Board which did not have controlling authority over the suit land they were not entitled to a hearing.

The learned trial Judge dealt with these issues in his Ruling as issue
4 (*Whether the respondent's failure to afford the applicant a fair*
15 *hearing before terminating the lease was in breach of the rules of natural justice and tainted with procedural impropriety?*). In resolving the issue, the Learned trial Judge stated as follows;

"I have considered the submissions of both sides on the issue. Article 28 of the Constitution 1995 provides;

20 *"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."*

In my and considering the facts of this case there was no reason to give a hearing to the applicant who had no relationship with the Respondent, who by its own admission breached the lease terms. This issue is also answered in the negative.”

5 This comment of the learned trial Judge is all the Judge had to say about the Appellant’s claim that it was entitled to a fair hearing and in my view, I do not agree with the trial Judge.

The Appellant was not a stranger to the Respondent. They had a relationship by virtue of the Appellant being a transferee of the
10 leasehold title to the suit land. **Under Section 59 of the Registration of Titles Act Cap 230**, a certificate of title is conclusion evidence that the person named in it as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that
15 estate or interest or has that power. In the instant case the Appellant was such registered proprietor who could not just be wished away by ignoring its registered proprietary status. The pedestrian manner in which the Respondent dealt with the clear notice they had of the presence of the Appellant on the suit land and the notoriety of the
20 Appellant’s registered proprietor status leaves a lot to be desired of this government institution. The institution behaved like a lay man who does not know what to do when they are faced with such undeniable facts as those in this particular case. A decision ought to have been made by the Respondent in time to deal with the issue.

I would further find that the Appellant was not a stranger to the lease and indeed had a relationship with the Respondent because under **Section 92(2) of the Registration of Titles Act Cap 230** (the RTA) upon registration of the transfer, the estate and interest of the proprietor as set forth in the instrument or which he or she is entitled or able to transfer or dispose of under any power, with all rights powers and privileges belonging or appertaining thereto, shall pass to the transferee; and the transferee shall thereupon become the proprietor thereof. Accordingly, the Appellant upon transfer, became proprietor of the lease and could not by any stretch of imagination be deemed a stranger to the lease.

The question that then immediately follows is does the right to a fair hearing apply to leases by statutory bodies or not. I hasten to state that of course it does apply. *The Constitution of the Republic of Uganda, 1995* severally provides for the right to a fair hearing and the right to fair treatment before public bodies. The most relevant provisions are the following;

Article 28(1) of the Constitution of the Republic of Uganda 1995 states;

“28. Right to a fair hearing.

(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.”

Article 42 of the Constitution of the Republic of Uganda 1995 states;

“42. Right to just and fair treatment in administrative decisions.

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.”

Article 44 of the Constitution of the Republic of Uganda 1995 states;

“44. Prohibition of derogation from particular human rights and freedoms.

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—

(a) freedom from torture and cruel, inhuman or degrading treatment or punishment;

(b) freedom from slavery or servitude;

(c) the right to fair hearing;

(d) the right to an order of habeas corpus.”

The total sum of these Articles is that there is no way a public body can make a final decision without affording the directly affected persons a hearing. It is constitutionally speaking not possible. In this case I observed that the Respondent in their affidavit in reply to the application for judicial review in the High Court asserted *quasi* common law rights and principles. These must be read and

interpreted in conformity with *the Constitution of the Republic of Uganda, 1995 as required by Article 274 of the same constitution.*

5 Article 274 of the Constitution states;

“274. Existing law.

10 *(1) Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.*

15 *(2) For the purposes of this article, the expression “existing law” means the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date.”*

20 Further the Respondent did not state anywhere in their affidavit in reply that they afforded the applicant a fair opportunity to be heard. No prior notice was given to the Appellant. Instead they completely ignored the Appellant with no decision until the time when the lease expired.

It also appears the Respondent was hell bent on ensuring that the lessee's efforts to fulfill the covenants of the lease were completely frustrated. The building plans were retained with no approval and the Appellant's application for renewal of the lease was responded to
5 in ambiguous terms. If the reason for all such behavior was that the Respondent did not recognize the transfer of the lease to the Appellant, they ought to have informed it of the same. The Appellant was not treated fairly as required by *Article 42 of the Constitution of the Constitution of the Republic of Uganda, 1995* and the indifferent
10 conduct of the Respondent fell short of that standard required of a public institution under the Articles of the Constitution I have referred to.

Even if the Appellant were to be a stranger to the lease as alleged by the Respondent, the predecessor in title to the Appellant ought to
15 have been heard and they would have revealed to the Respondent that there was a third party affected by their impending decision. Either way they ought to have given their preferred lessee a fair hearing considering that they had priority rights over the lease.

For the reasons I have given above I would find that the Appellant
20 was entitled to be heard before making the decision not to renew the lease considering that the Respondent is a public authority and body with obligations to treat those that appear before it justly and fairly. I also find that consequently the Appellant had a right to apply to a court of law in respect of the decision taken against it.

In the final result I would find that the learned trial Judge erred in law and in fact when he held that the Appellant which was the registered proprietor of the lease of the suit land was not entitled to a hearing on whether the lease term would be extended. I would
5 accordingly find merit in ground 1 of the appeal.

***Ground 2 The Learned Trial Judge erred in law and in fact when he failed to find that the appellant as transferee of the lease had priority of estate with the respondent in respect of the suit land and instead held that the appellant was a
10 stranger with the lease.***

This ground was abandoned by the appellant.

***Ground 3 The Learned trial judge erred in law and in fact when he held that the appellant which was registered as proprietor of the leasehold suit land as transferee and had been in
15 possession thereof with the knowledge of the respondent was not entitled to apply for judicial review of the respondent's decision not to extend the lease.***

Determination of Ground 3

I have carefully considered the submissions of the parties. In
20 determining ground 1 of the appeal, I found that the respondent is a public body to which Article 42 of the Constitution applied. For the reasons I have given in determining ground 1 of the Appeal and the Articles I have referred to therein, I would find that indeed the learned trial Judge erred in law and in fact when he held that the Appellant

which was registered as proprietor of the leasehold suit land as transferee and had been in possession thereof with the knowledge of the respondent was not entitled to apply for judicial review of the respondent's decision not to extend the lease.

- 5 I would accordingly find merit in ground 3 of the appeal.

Ground 4 The learned trial judge erred in law and in fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion that the appellant was a stranger to the lease.

10

Determination of Ground 4

I have carefully considered the submissions of the parties. In determining ground 1 of the Appeal, I found that the Appellant was not a stranger to the lease owing to the fact that it was a registered
15 proprietor and successor in title to the lease under the provisions of the Registration of Titles Act Cap 230. It therefore follows that the learned trial judge erred in law and in fact as he failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion that the appellant was a stranger to the lease.

- 20 In the result I would find merit in ground 4 of the appeal.

In reading the entire record of Appeal, I noticed that the trial Judge spent a lot of the time determining the merits of the lease agreement or dispute over the lease. This was an error on the part of the trial Judge given the nature of the application before him.

My understanding of Judicial Review proceedings is that they are not about the merits of the decision but rather about the decision-making process. I still hold the same views I held at the High Court in the case of ***Balondemu David vs The Law Development Centre***

5 ***Miscellaneous Cause No.61 of 2016*** to the effect that in Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision-making process through which the decision was arrived at. It is rather concerned with the courts' supervisory jurisdiction to
10 check and control the exercise of power by those in public offices or persons/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall.

It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in
15 nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. (see the commonly cited High Court Decisions
20 of *John Jet Tumwebaze vs Makerere University Council & 2 Others Miscellaneous Cause No. 353 of 2005* and *DOTT Services Ltd vs Attorney General Miscellaneous Cause No.125 of 2009*.)

For one to succeed under Judicial Review its trite law that he must prove that the decision made was tainted either by; illegality,
25 irrationality or procedural impropriety. The respondent as a public

body is subject to judicial review to test the legality of its decisions if they affect the public.

In the case of *Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)*, Court noted that;

5 *“Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected.”*

10 In the instant case clearly, there was some level of unfair treatment on the part of the Respondent against the Appellant. The Respondent being a public body its decisions were amenable to Judicial review regardless of the merits of the case. The Respondent’s entire response to the case was on merits of the decision rather than the decision-
15 making process. This left the Appellant’s assertions and claims unresponded to and as such on the real issue in dispute there was no evidence the basis on which the Respondent’s case could possibly succeed.

The trial Judge indeed erred in both fact and law on the entire case.

20 **Conclusion**

For the reasons I have given the Appeal would wholly succeed on grounds 1, 3 and 4 of the appeal.

I would dismiss ground 2 of the appeal the same having been abandoned by the appellant.

I would then order as follows;

a. The appeal is allowed.

b. The ruling of the High Court is set aside.

c. An order of certiorari to quash the decision of the Respondent not to extend the Appellant lease on land comprised in Plot 52 Port Bell Road is hereby granted.

d. An order of mandamus is hereby issued compelling the Respondent to give the Appellant a fair hearing before a decision can be made on whether to renew the lease or not.

e. An order of injunction to restrain the Respondent from leasing the suit land to any person until after giving the Appellant a fair hearing.

f. The Respondent shall pay the Appellant the costs of this Appeal and the costs of the proceedings in the High Court.

I so order

Dated this 03rd day of January 2023



Stephen Musota
JUSTICE OF APPEAL

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JUDGMENT OF HON. JUSTICE RICHARD BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment prepared by Musota JA and I agree that this appeal should be dismissed.

As Bamugemereire, JA agrees with the Judgment and the proposed orders of Musota, JA there will be orders in the terms proposed by the learned Justice of the Court of Appeal.



Richard Buteera

DEPUTY CHIEF JUSTICE

03.01.2023

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KAMPALA CAPITAL CITY AUTHORITY ::::::::::: RESPONDENT

**(Appeal arising from the decision of the High Court of Uganda
at Nakawa in HCMC No. 21 of 2014)**

JUDGMENT OF CATHERINE BAMUGEMEREIRE, JA

I have had the privilege of reading in draft the Judgment of my learned brother Stephen Musota, JA. I agree with the reasoning, decision and orders made.

Dated at Kampala this 03rd day of January 2023



Catherine Bamugemereire
Justice of Appeal