

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0 143-2003

IN THE MATTER OF S. 38 OF THE JUDICATURE STATUTE,
STATUTE NO. 13 OF 1996

AND

IN THE MATTER OF RULE 5 OF THE LAW REFORM
(MISCELLANEOUS PROVISIONS) (RULES OF COURT) RULES S. 1. 74-1

AND

IN THE MATTER OF A DECISION BY BUSHENYI DISTRICT LAND
TRIBUNAL DATED 5TH FEBRUARY 2003 DIRECTING MWEBAZE FRED
TO LEAVE HIS LAND WITH IMMEDIATE EFFECT

AND

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE WRIT OF
CERTIORARI BY:

1. MWEBAZE FRED)
2. PADDY VINCENT)..... APPLICANTS

VS

BUSHENYI LAND TRIBUNALRESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

This application seeks the prerogative writ of certiorari against the decision of the Bushenyi Land Tribunal made 5th February 2003 whereby the first applicant was told to leave his land immediately: The application by notice of motion is supported by two affidavits, one from each of the applicants. The respondent was duly served but it neither tiled pleadings in rebuttal nor was it represented at the hearing of this application. Hearing was thus ex parte.

The grounds relied upon were stated to be:

1. The applicants have been granted leave to file the instant application.
2. The decision of the Bushenyi Land Tribunal dated 5th February 2003 directing the 1st Applicant to leave his land with immediate effect was made arbitrarily is oppressive and was made contrary to Rules of natural justice.
3. The said decision was made without jurisdiction to do so.
4. It is fair reasonable and in the interests of justice that the orders sought herein be granted

The facts, as can be gathered from the pleadings show that the second applicant sold a piece of land to the first Applicant. On 5th February 2003 a letter issued from the Respondent to the 1st Applicant questioning the way he had purchased the land in issue and advising and requesting him to leave the land with immediate effect. The letter stated further that if the 1st Applicant had any complaint he should report to the office of the Respondent for more clarification. Thereupon the 1st Applicant instructed a lawyer who wrote to the Respondent apparently seeking clarification. The reply to the lawyer followed on 17th February 2003. It acknowledged that a responsible officer of the Tribunal had written the letter of 5th February 2003. Essentially the letter to the lawyer stated the earlier letter had been written owing to the mood in which one Asimwe Joy was and that all that was sought was for the first Applicant to go to the offices of the Respondent so that he could be given more information about the matter.

Section 36 of the Judicature Act (Cap. 13) provides inter alia for the prerogative writ of certiorari. Certiorari is a means of quashing decisions of inferior courts, tribunals and public authorities where there has been an excess of jurisdiction, an ultra vires decision, a breach of natural justice or an error of law on the face of the record. The order will issue to control administrative decisions only to statutory authorities or where the administrative authority has acted in excess of its statutory power. It will also issue to ensure that a statutory tribunal or body applies the law correctly. Simply put the order is available to ensure the proper functioning of the machinery of Government. See *In Re: Application by Bukoba Gymkhana Club* [1963] EA 478.

I have already referred to the correspondence which was received by the 1st Applicant from the Respondent. Neither the letter of 5th February 2003 nor that of 17th February 2003 state that it was mandatory for the 1st Applicant to leave the land in issue. The letters say the Applicant was

advised and requested to leave the land and that he was to report to the office of the Respondent. Indeed the 1st Applicant must have clearly got the import of the letters because there is nothing to show he left the land. In fairness to him he does not plead that either. In the circumstances I do not see what order there is for this court to quash by way of issuing the writ sought. The writ of certiorari is discretionary and issues only in fitting circumstances. See Re- An Application by Gideon Waweru Gathunguri [1962] EA 520 and Masaka District Growers Co-operative Union vs Mumpiwakoma Growers Co-operative Society Ltd & 4 Others [1968] EA 258. This application fails, as I see no ground for issue of the writ sought.

For obvious reasons there is no order for costs.

P. K. Mugamba

Judge

31st May 2005

31st May 2005

Mr. Ngaruye for the Applicants

2Iid Applicant in court

Ms Tushemereirwe court clerk/interpreter

Court:

Ruling read in court.

P. K. Mugamba

Judge