

THE REPUBLIC OF UGANDA A
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISC. CAUSE NO. 173 OF 2010

1. LIVERCOT IMPEX LTD

2. UGANDA INVESTMENT AUTHORITY ::::::::::::::: APPLICANTS

VERSUS

1. THE ATTORNEY GENERAL

2. YOUR CHOICE ::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

RULING

This application for Judicial Review was brought under Sections 36 and 38 of the Judicature Act (Cap 13), Article 50 of the Constitution and Rules 3 and 6 of the Judicature (Judicial Review Rules) S. I 11 of 2009 for;

(a) a declaration that the report of the Inspector General of Government dated 1st of November 2010 about the ownership of Plot 46 Block 236 were irrational, ultra vires, were irregularly and wrongly made in contravention of the law and ought to be quashed.

(b) an order of Certiorari to call and quash the unlawful and/or irrational Report.

- (c) an order of Mandamus directing the Inspector General of Government to desist from exercising the powers he does not have and to make illegal or irrational orders.
- (d) an order of a Permanent injunction restraining the Inspector General of Government from enforcing his recommendations contained in the report.
- (e) costs of this application.

The application is supported by the affidavit of Moses Ramu Nareebe a Managing Director of the 1st applicant and is based on the following grounds:-

- a) The Uganda Investment Authority is the owner of Land Comprised in Kyadondo Block 236 Plot 36 at Bweyogerere, Kampala Industrial and Business Park at Namanve having acquired the Mailo Interest on the 17th July 2003 from Uganda Land Commission.
- b) In 2007 the Uganda Land Commission which had transferred its propriety interest in the Land aforesaid to the Uganda Investment Authority purported to grant a Lease to one Ronnie Balya who also purported to transfer the Lease interest to the second respondent.
- c) The Commissioner for Land Registration discovered the anomaly/error aforesaid and caused cancellation of the Lease granted to Ronnie Balya and the error was corrected.
- d) That the Uganda Investment Authority allocated to the applicant who accepted the allocation/offer and is preparing to commence developing it and has completed all the preparations.

- e) The Inspector General of Government upon a complaint of undisclosed person made a report wherein he found out that the Uganda Investment Authority was registered as proprietor of the Land in 2003 and that Uganda Land Commission who had transferred its interest on the land to Uganda Investment Authority in 2003, purported to offer a Lease of the same land to Ronnie Balya in 2007 who purported to transfer the Lease to the 2nd Respondent which Lease was cancelled but made on irrational orders that it be registered which is Ultra vires.
- f) That the IGG has his report aforesaid directed the Registrar of Titles to restore the Lease granted to Ronnie Balya in error which lease has been cancelled which is irrational/irregular, wrong illegal and ultra vires the powers of the IGG.
- g) That if the recommendations of the IGG contained in the report are implemented it will occasion great injustice to the applicant and the whole report ought to be quashed.

The first Respondent contended that the IGG had the power and competence to direct as he did, while the 2nd Respondents claim ownership/interest in the said land.

Two issues were raised to determination of this Court. These were:-

1. Whether the application was properly before this Court
2. Whether the applicants are entitled to the remedies sought.

Before resolution of the above issues Court is required to resolve two preliminary points raised by Mr. Mwaka Phillip counsel for the 1st respondent and supported by Mr. Bautu counsel for the 2nd respondent.

The first preliminary point is that the Inspector General of Government rather than the Attorney General should have been made party to the application because the impugned decision was made by them. It is to be observed that the order to exclude the IGG as a respondent in this suit was made by this court in line with the decision of the Supreme Court in the case of **Gordon Sentiba vs. Inspector General of Government** SCCA 06/2006 where it was held that the IGG is not a legal entity which can sue or be sued. After the direction to exclude the IGG was given, Mr. Phillip Mwaka is recorded to have informed Court that the IGG was still insisting that he should have been sued in his own capacity or added as a party to the application. To me whether or not the IGG was a party to the suit is immaterial and when this Court gave direction that he should be excluded he should have filed an affidavit that would have assisted the Attorney General defend his decision in the impugned report. In fact Dr. Maggie Kigozi the Executive Director of the Uganda Investment Authority and Mr. Balya both of whom were not party to the application were under Rule 6(2) and(6) of the Judicature (Judicial) Review Rules served with the amended motion to allow them an opportunity to be heard during the hearing of the motion and both of them filed affidavits defending their respective position in the matter in issue and the IGG should have done the same to assist the Attorney General who would have in turn assisted court in resolving the issue of how far the mandate of the IGG goes in as far as investigations and decisions affecting other government departments is concerned. Court did not have the benefit of the IGG's evidence in this application because none was filed.

Arising out of the above issue an issue whether the application should have included the pleading that the Attorney General was vicariously liable for the actions of the IGG was raised and to me the issue of vicarious liability in an application for judicial review did not arise because as this Court will show

the scope of judicial review goes to the manner in which a decision is reached and this can be done without a pleading of vicarious liability.

The other preliminary point raised was that instead of filing the impugned report only a covering letter of the report was filed. In essence the argument is that there is no report that this Court is being asked to quash.

This court was availed a copy of the communication from the Ag. Inspector General of Government to the Minister of Lands, Housing and Urban Development. It is headed-

“ALLEGED USE OF FORGED DOCUMENTS TO CLAIM OWNERSHIP OF PRPERTY ON BLOCK 236 PLOT 46 LRV 3943 FOLIO 13) AT NAMANVE BY UGANDA INVESTMENT AUTHOTIRY AND MONISTRY OF LANDA OFFICIALS”.

The communication gives details of the investigations as to the circumstances under which the Uganda Investment Authority and Ronnie Balya were holding two valid titles to the land in dispute and investigates the legitimacy of the title held by the Uganda Investment Authority and that held by Ronnie Balya. The Inspector General of Government draws the following conclusions.

“In view of the findings and observations above, in accordance with Article 230(2) of the Constitution of the Republic of Uganda, which states that the Inspector General of Government may during the cause of his or her duties or as a consequence of his or

her findings, make such orders and give such directions as are necessary and appropriate in the circumstances, it is hereby directed that you:

- 1. Caution the Chairman, members and Secretary to the Uganda Land Commission not to rely on reports authored by non technical staff of the Commission when making decisions; and to carry out their functions diligently to avoid such incidents.***
- 2. Ensure that M/s Your Choice Ltd are allowed to register their interest and proceed with approved developments as they are occupants of the land, bonafide purchasers for value who derived their interest from Ronnie Balya, and no fraud has been disclosed. M/s Your Choice Ltd obtained their interest prior to any equitable interest of Livercot Impex Ltd, and should take priority.***
- 3. Cause the permanent Secretary Ministry of Lands, Housing and Urban Development to direct Sarah Kulata Basangwa the Ag. Commissioner, Land Registration to register the leasehold interest of your choice Ltd, who are purchasers for value without notice as the cancellation effected by the Ag. Commissioner, without conducting a hearing for all interested parties, and after Ronnie Balya had transferred his interest to a third party is ineffective.***
- 4. Cause the Permanent Secretary, Ministry of Lands, Housing and Urban Development to caution the Ag. Commissioner, Land Registration, Ms Sarah Kulata Basangwa for taking unilateral decisions to cancel a title, without affording any of the interested parties or the registered proprietor a hearing to defend their interest.***

5. Ensure that the Uganda Land Commission, which is responsible for the mess, compensates the Uganda Investment Authority for their lost interest in the land with the fair market value of the property.

The purpose of this letter is to forward to you the detailed report of the investigation for implementation of the directions. Please inform us the action taken within 30 days from the date of this letter.

These are the decisions that this Court is being asked to review and this Court finds that the application was properly before this court.

The purpose of Judicial review is well defined in a number of cases decided by this Court and I choose the following definition from the case **of KULUO JOSEPH ANDREW & TWO OTHERS VS ATTORNEY GENERAL & SIX OTHERS MISC. CAUSE NO. 106 OF 2010** (unreported) where His Lordship Justice Yorokamu Bamwine state as follows:-

“It is trite that Judicial Review is not concerned with the decision in issue perse but with the decision making process. Essentially judicial review involves the assessment of the manner in which the decision is made; it is not an appeal and the jurisdiction is exercised in supervisory manner, not to vindicate rights as such, but to ensure that public, powers are exercised in accordance with basic standards of legality, fairness and rationality.

As Lord Hailsham of Marylebone L.C stated in **Chief Constable of North Wales vs. Evans [1982]3 ALL ER 141:**

“The purpose of judicial review is to ensure that the individual receives fair treatment, not to ensure that the authority, after according fair treatment, reaches on a matter which is authorized or enjoined by law to decide from itself a conclusion which is correct in the eyes of the Court.” (Underlining provided).

I agree with the above statement and from the communication quoted above Court is able to discern the conclusions that Inspector General of Government reached and establish as to whether or not the IGG was by law enjoined to take the decisions enumerated because if he was not enjoined by law to take these decisions this Court may by way of judicial review quash them without in any way attempting to determine the interest of any of the parties before this Court in the land in dispute.

This Court considers the decisions communicated to the Minister by the IGG to have far reaching implications. For example I do not think that whatever powers the IGG derives under the Constitution he had power to reverse a decision of the Uganda Land Commission which is also established under Article 237 of the Constitution and derives its power from Article 239 of the Constitution. I also do not think that the IGG can reverse the decisions of the Commissioner Land Registration who derives her authority from the Registration of Titles Act. The IGG pronounces himself on matters of who has what interest in the land, who is a bonafide purchaser for value and on fraud which to me can only be determined after a trial. He directs the minister to caution the Chairman, members, Secretary of the Uganda Land Commission and the Ag. Commissioner Land Registration on the conduct of their offices.

These are matters of discipline and I doubt if the IGG is enjoined to exercise those powers let alone direct a Minister to take action as he did in his communication. It is for this reason that the applicant who claims an interest in the land as much as the others do pray that this Court quashes the report of the IGG which smirks of illegality.

The prerogative orders sought from this Court are orders of certiorari declaration and mandamus and a permanent injunction. In the case of **JOHN JET TUMWEBAZE AND MAKERERE UNIVERSITY COUNCIL AND OTHERS (Civil Application No. 78 of 2005)** The Hon Ag. Justice Remmy Kasule (as he then was) gives definitions of the above reliefs. Certiorari issues to quash a decision which is ultra vires or vitiated by an error on the face of the record. A declaration is a pronouncement by Court, after considering the evidence, of an existing legal situation. A declaration enables a party to discover what his/her legal position is about the matter the subject of the declaration and thus open a way to the party concerned to resort to other remedies for giving effect to the declared legal position. A mandamus order is issued in order to compel performance of a statutory duty. It is used to compel Public Officers and Public Books to perform duties imposed on them by statute.

Of the remedies sought the one of certiorari is the only one available because once the report is quashed the issue of a Temporary injunction would not arise. There would be no report to enforce. An order of mandamus is being sought to direct the IGG to desist from exercising the powers he does not have and make illegal or irrational orders. This is not the same as compulsion to perform a statutory duty. The declaration being sought is not to enable the applicant discover his or her legal position but or enable the

applicant give effect to the legal position but Court is being asked to declare the position of the impugned report.

In the circumstances this Court finds the report of the IGG ultra vires and erroneous on the face of the record. Court orders that it be quashed. To that extent this application is allowed with costs to the applicant.

Eldad Mwangusya

J U D G E

17.02.2012