

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LUWERO
MISC. CAUSE NO. HCT-17-LD-MC-0018-2022

- 1. SEKITOLEKO JUDE**
- 2. KIMULI JOHN**
- 3. SSEJJINDA ANATOLI**
- 4. SSEBYOLE JOHN PAUL**
- 5. SERWADDA JOSEPH**
- 6. TUMUSIIME JUDITH**
- 7. KALYOWA ADAM**
- 8. GALIWANGO AUGUSTINE**
- 9. MATEMBE BENJAMIN**
- 10. NAMULI MARGARET**
- 11. ALPHA NKUNDA**
- 12. ALMA KOMUNTALE.....APPLICANTS**

V

- 1. COMMISSIONER LAND REGISTRATION**
- 2. NILE FIBRE BOARD LTD.....RESPONDENTS**

BEFORE LADY JUSTICE HENRIETTA WOLAYO
RULING

Introduction

1. By an amended notice of motion filed on 10.11.2023, the applicants moved court under Sections 96 and 98 of the Civil Procedure Act Cap. 71; Section 91 (1) of the Land Act Cap. 227; Section 37 (a) and (b) of the Land (Amendment Act) 2004; Article 139 of the Constitution; Section 33 of the Judicature Act Cap. 13; Sections 177 and 182 of the Registration of Titles Act Cap.230 for the following relief:
 - a) Time be enlarged within which to file an appeal against the decision of the Commissioner Land Registration hereafter

referred to as commissioner and in the alternative, the appeal be validated, heard and determined with the following orders:

- i. The decision of the commissioner cancelling the applicant's certificates of title comprised in Buruli Block 228 Plots 28,29,30,31,32,33,and 34 and FRV Folios 1,4,6,7,9,10 and 11 be set aside.
 - ii. The decision of the commissioner cancelling the applicant's certificates of title as listed in (a) above when there was an existing Court order in favour of the applicants amount to contempt of Court and ought to be set aside.
 - iii. The said certificates of title be restored to the applicants.
2. The grounds of the application are contained in the motion itself and the affidavit in support of Tumusiime Judith and her affidavit in rejoinder who deposed the affidavits on her own behalf and the other eleven applicants.
3. The second respondent Nile Fibre Board Ltd opposed the motion and relied upon the affidavit in reply of Sonaimuthu Muthaiah. The first respondent the Commissioner Land Registration (CLR) did not file an affidavit in reply but filed written submissions.

4. Counsel for the applicant; counsel for the first respondent(CLR) and counsel for the second respondent Nile Fibre Board Ltd all filed written submissions which I have carefully considered.

Background facts

5. It is not disputed that by an amendment order dated 4.10.2021, the CLR Karuhanga John cancelled certificates of title comprised in Buruli Block 228 Plots 28,29,30,31, 32, 33, and 34 (formerly Plot 6) land at Kyanaka –Nakasongola freehold register Volume 1480 Folio 1,4,6,7,9,10,11. These six (seven) freehold titles were all created on 20.2.2018 by the registrar of titles.
6. Prior to the cancellation of these titles in the names of the twelve applicants, by **Land Division HCCS No. 301 of 2018**, Nile Fibre Board had sued the twelve applicants (Sekitoleko and eleven others) and Nakasongola District Land Board and the CLR for cancellation of the same titles on grounds the titles were fraudulently issued to Sekitoleko and eleven others, the current applicants in Civil Suit No.301 of 2018 filed on 3.5.2018.
7. While the court case was on-going, Nile Fibre Board Ltd was also pursuing cancellation process before the CLR. This is acknowledged in paragraph 5l of their plaint in the said suit. After several adjournments, Civil Suit No. 301 of 2018 was dismissed for want of prosecution on 10.7.2020 by my brother Batema N.D.A J along with the counterclaim of Sekitoleko and eleven others.

8. By **HCMA No. 799 of 2020**, Nile Fibre Board Ltd applied for reinstatement of the suit but the same was declined on 25.2.2021 by my brother Kawesa Henry J.
9. By **Civil Appeal No. 207 of 2021**, Nile Fibre Board Ltd appealed the orders of my two brother judges in the Court of Appeal on 10.6.2021. On 15.11.2021, Sekitoleko and eleven others filed **MA No. 346 of 2021** in the Court of Appeal for a temporary and mandatory injunction against Nile Fibre Board Ltd and the CLR who were attempting to Cancel their freehold certificates.
10. It is evident from the amendment order of the CLR that by 15.11.2021 when Sekitoleko and others sought the intervention of the Court of Appeal, the CLR had already cancelled their freehold certificates on 4.10.2021 which means Court of Appeal MA No. 346 of 2021 was overtaken by events.
11. Court of Appeal Civil Appeal No. 207 of 2021 filed by Nile Fibre Board Ltd was withdrawn on 22.11.2021 by Nile Fibre Board Ltd and the registrar of the Court of Appeal duly entered the withdrawal on 23.11.2021. This means MC. No. 0018 of 2022 is properly before me and the question of forum shopping does not arise as submitted by counsel for the second respondent Nile Fibre Board Ltd.

Luwero Misc. Cause No. HCT-17-LD-MC-0018-2022 Sekitoleko Jude and eleven others v CLR and Nile Fibre Board Ltd.

12. In this application, the applicant seek an order to enlarge time within which to appeal the decision of the CLR dated 4.10.2021;an order setting aside the cancellation of the certificates ; an order restoring the titles to the applicants and an order the that the respondents were in contempt of court.

Omni-bus application

13. Counsel for the applicants justified the omni-bus application by reference to the decision in **Okullu & three others v Lacen (Civil Appeal No. 38 of 2017[2019] UGHC 43 (29 August 2019)** where Mubiru J reasoned that the propriety of omni-bus applications is determined on a case by case basis which means there is no hard and fast rule that bans them. The same decision was cited by counsel for Nile Fibre Board Ltd in opposition. I agree with my brother Mubiru J that where the applications are premised on similar facts and the relief sought is not in different directions, an omni-bus application will pass. In this case, the application for enlargement of time, for cancellation of titles, restoration of previously cancelled titles and for the first respondent to be held in contempt can conveniently be disposed of in the same application.

Appellate jurisdiction of the High Court.

14. The applicant moved the court under Section 91(10) of the Land Act Cap.227; Section 37 (a) and (b) of the Land (Amendment Act) 2004; Article 139 of the Constitution; and Section 33 of the Judicature Act ; and Sections 177 and 182 of the Registration of Titles Act. He formulated the following grounds of the application as follows:

- i. The first respondent erred in law and in fact when they cancelled the applicant's certificate of title comprised in Buruli Block 228 lots 28,29,30,31,32,33,34 and FRV FOLIOS 1,4,6,7,9,10, 11 without giving the appellants an opportunity to be heard before cancelling their title , a violation of the cannon principle of natural justice.
- ii. The first respondent erred in law and fact when he handled a matter of fraud in excess of his authority and mandate.
- iii. The first respondent erred in law and in fact when it cancelled the appellants' certificates of title without effecting proper service on the applicants.
- iv. The first respondent erred in law and in fact when it cancelled the applicants' proprietorship when the certificates of title had a court order maintaining the status quo of the suit land.
- v. The first respondent erred in law and in fact by cancelling the applicants certificates over matters that had been adjudicated upon in the courts of vide High Court Civil Suit No. 301 of 2018 where the CLR was a party.
- vi. The second respondent withdrew Court of Appeal Civil Appeal No. 202 of 2021 to defeat the applicants' appeal

against the cancellation which occasioned a miscarriage of justice.

15. Obviously, without directly saying so, the applicant sought to appeal the decision of the CLR. I will now consider each of the laws under which the applicant moved the court.

Article 139 of the Uganda Constitution 1995 as amended

16. **Under Article 139 of the Constitution**, appellate jurisdiction on the High Court is conferred by law. **Article 139(1)** stipulates that:

a. The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate jurisdiction and other jurisdiction as may be conferred on it by this Constitution or other law .

Article 139(2):

Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court.

Section 91(10) of the of the Land Act Cap.227

17. Section 91(1) confers a right of appeal on any person aggrieved by a decision of the Registrar of titles to the District Land Tribunal within 60 days of the decision. By **Practice Direction 1 of 2006**, the Hon. Chief Justice transferred jurisdiction of Land tribunals to magistrates' courts. The effect of this analysis is that appeals from decisions of the registrar of titles under Section 91 go to magistrates' courts. In the premises, I

do not have direct appellate jurisdiction from decisions of the Registrar of Titles.

Section 177 of the Registration of Titles Act

18. This Section provides that where land is recovered in any lawful proceeding, the High Court is empowered to cancel a certificate or order any entry as the circumstance of the case require. This means the proceeding envisaged might be before the High Court itself or before a subordinate court. Therefore, Section 177 does not confer appellate jurisdiction on the High Court against decisions of the Registrar of Titles, it simply confers original jurisdiction.

Section 182 of the RTA

19. This Section confers on a proprietor of land who wishes to bring land under the Act or to have a certificate of land issued or to have any act or duty performed by the registrar and the registrar refuses, may require the registrar to put his or her decision in writing and the owner or proprietary may summon the registrar to appear before the High Court to substantiate his or her grounds for the impugned decision. It is evident that Section 182 of the RTA confers on the High Court powers to review decisions of the Registrar of titles in its original jurisdiction but not powers of appeal.

20. In their submissions, counsel for the applicant dwelt at length on the **Judicature (Judicial Review) Rules of 2019** while submitting on the ground that the learned CLR erred when he denied the applicants a right to be heard. Obviously, the applicant ought to have brought this

application as a review under the Judicial Review Rules rather than as an appeal under Section 91(10) of the Land Act. Having found that I do not sit in appeal over decisions of the Registrar of Titles since no such jurisdiction is conferred by law, I decline to determine this case as an appeal.

21. For the sake of completeness, I shall deal with this case as one brought under Judicial Review Rules 2019 as amended and arrive at a decision on the dispute between the parties as all evidence from both sides is available on record.

Enlargement of time

22. Although **Rule 5(1) of the Judicial Review Rules S.I 11 of 2009** as amended enjoins applicants to apply promptly within three months from the date the impugned decision was made, it also empowers the court to extend time for good cause. The applicants through their attorney Tumusiime Judith deposed that as court process in the Court of Appeal was on-going between the two parties, unknown to them, the CLR cancelled their titles whereupon they filed **Court of Appeal MA. NO. 346 of 2021 on 15.11.2021 Sekitoleko Jude and eleven others** to challenge the decision of the CLR which had been made on 4.10.2021 but the same collapsed when the respondents withdrew the substantive appeal CACA NO. 202 of 2021 between the parties on 23.11.2021.
23. Sonaimuthu Muthaiah in his affidavit in reply on behalf of the second respondent, deposed that the applicants were aware of the decision of

the CLR but did not take legal steps to seek redress. Counsel for the second respondent submitted that the applicants were guilty of inordinate delay and should not be allowed to enlarge time, he cited several authorities in support **including Kintu Samuel and anor v Registrar of Companies HCMC No. 58 of 2021** in support.

24. As submitted by counsel for the applicants, the dilatory conduct of the previous lawyers who did not take legal steps to remedy their clients' legal challenges should not be visited on the applicants.

Furthermore, fair hearing principles under Article 28 of the Constitution confer on the applicants a right to be heard, their being late, notwithstanding. In the premises, I exercise my discretion to validate their application which ought to have been lodged latest by end of February 2022.

Judicial Review

25. The gist of the decision of the CLR dated 4.10.2021 and which is sought to be reviewed is that the CLR received a request from Sekabanja & Co. Advocates on behalf of Nile Fibre Board Ltd to cancel freehold certificates of title comprised in Buruli Block 228 Plots 28,29,30,31,32,33,34 as the second respondent was the legal owner of land comprised in Plot 6 Kyanaka –Nakasongola from which Plots 28 to 34 were curved.

26. By a letter dated 10.7.2018 addressed to the CLR, the secretary Nakasongola District Land Board recalled the minutes under which the seven freehold titles were issued.

27. Based on these actions, the CLR issued a notice of intention to effect changes in the register dated 4.5.2021 to the affected persons to appear for a hearing on 9.9.2021 and only Tumusime Judith appeared and presented her objection, according to the amendment order. Upon considering her objection, the CLR cancelled the seven freehold titles on the grounds they were issued illegally and in error.

28. The ground for judicial review as put forward by the applicants is principally that the certificates were cancelled without according the applicants a right to be heard.

Principles of judicial review.

29. **Rule 3 of the Judicature (Judicial review Rules) 2019** defines judicial review as:

‘The process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals, and other bodies or persons who carry out quasi-judicial functions or who are charged with performance of public acts and duties.’

30. **Article 42 of the Uganda Constitution** confers on any person appearing before an administrative body or official, to be treated justly and fairly and confers on an aggrieved person to apply to court for redress.

31. Counsel made reference to several well established authorities on the parameters which guide the court in determining unfair treatment. These include **Chief Constable of North Wales v Evans [1982]3 ALL ER 141**; **Pastoli v Kabale District Local Government Council and others [2008] 2 EA 300** where the courts reaffirmed the position that in order for an applicant to succeed in an application for judicial review, he or she must show that the decision is tainted with illegality, procedural impropriety and irrationality.

32. An additional requirement under **Rule 7A of the 2019 Rules** is that the aggrieved person should have exhausted existing remedies available within the public body or the law. It is not disputed that the parties were in the Court of Appeal at the instance of Nile Fibre Board Ltd when the applicants' titles were cancelled by the CLR thereby prompting the appellant(Nile Fibre Board Ltd) to withdraw the appeal and thereby denying the applicants an opportunity to present their grievance to the Court of Appeal. It goes without saying that the applicants exhausted all available remedies prior to seeking judicial review.

Whether the CLR acted with procedural impropriety

33. It is evident that the CLR exercised his quasi-judicial powers under **Section 91(2) of the Land Act Cap.227** as amended which among other powers, authorizes the commissioner to take steps to give effect to the Registration of Titles Act, and while observing the principles of natural justice, to alter or cancel a certificate of title under circumstances where the certificate or instrument has been issued in

error; is illegally obtained or wrongfully retained. Under **Section 91(3)**, the Registrar of Titles is under an obligation to call for the duplicate certificate but may dispense with its production and proceed to issue a special certificate.

34. Under **Section 91(8)**, the Registrar of Titles has a duty to give 21 days notice to persons to be affected by a decision under Section 91; give an opportunity to the affected persons to be heard; conduct proceedings in accordance with the rules of natural justice and give reasons for any decision made. One of the cardinal principles of natural justice is *audi alteram partem* which means hear the other side or let the other side be heard as well.

Non-compliance with Land Regulations 2004

35. The second respondent Nile Fibre Board Ltd produced evidence which is relevant in determining whether the applicants were denied a right to be heard. The Permanent Secretary Ministry of Lands, Housing and Urban Development in a letter dated 18.4.2018 complained to the Nakasongola Secretary District Land Board that the applicants had been wrongly issued freehold titles to plots of land carved out of Block 228 Plot 6 Kyanaka when they were not customary tenants. This is a valid point because under Rule 10 of the Land Regulations 2004 (**Statutory Instrument 100 of 2004**) a holder of customary tenure can apply for conversion to freehold and likewise, under Rule 15, a lessee on public land can apply for conversion to freehold.
36. According to their affidavit in reply, the second respondent Nile Fibre Board Ltd purchased a leasehold interest from Abdu Katende and

became lessees on Block 228 Plot 6 among other plots and got registered on the certificate of title in 2012 under a running lease. Meanwhile, the applicants acquired freehold titles on this land on 20.2.2018. The applicants deposed that the lease had expired in 2016 and therefore the land was available for re-allocation to them under freehold tenure. The applicants relied on annexure C to the affidavit in support of Tumusiime. This is an old certificate of title and not legible for most of the document. However, I can see that the lease was for 49 years and was first registered in 1975.

37. The second respondent Nile Fibre Board Ltd produced their copy of the certificate of title that shows the first proprietor was registered in 1975 to Dick Wellington Kirumira for 49 years while the second respondent was registered on 29.8.2012 under the name Nile Forests Ltd. A closer look at the certificate shows that the lease run from 1967 which means it expired in 2016. As asserted by the applicants, the lease expired in 2016.

38. Under regulation 14 of the Land regulations, a condition for conversion of a lease from to freehold as indicated on Form 5 is that the leasehold which is sought to be converted is authentic and genuine. The regulations do not refer to an existing lease but rather use the words '**genuine and authentic**', regardless that the lease had expired. Counsel for the applicants in their submissions in rejoinder, submitted that the lease had expired when they got the freehold titles but the first respondent was still in possession, according to the affidavit in reply of the Sonaimuthu which means Nile

Fibre Board Ltd were still interested in the land until they were lawfully removed through due process.

Occupancy of the suit land

39. By their own admission, the applicants did not have a lease on Block 228 Plot 6 at Kyanaka so they had nothing to convert to freehold tenure. Instead, it is Nile Fibre Board Ltd who had a lease on the land under Leasehold register from 2012 and which was later converted to 99 years from 1.4.2019. The lease went as far back as 1975 when it was first issued and therefore, Nile Fibre Board Ltd had technically been in possession for 49 years if its predecessor's in title possession is factored.

40. In **Kampala District Land Board and Chemical Distributors Ltd v National Housing Construction Corporation Ltd Civil Appeal No. 2 of 2004 [2005]UGSC 20(25 August 2005) ULII**, the respondent NHCC had been granted a lease of land registered under LRV 1065 Folio 16 Plot No. M 239 at Bugolobi, a suburb of Kampala City. Adjacent to this property was another piece of land known as Plot No.157 Luthuli Second Close, Bugolobi, which was controlled by Kampala City Council under a statutory lease. NHCC had enjoyed occupation of this land, built a block of flats and other developments from 1979 to 2000. In June 1999, NHCC discovered that a lease offer had been made to Chemical Distributors Ltd. Despite protests from the respondent, the first appellant leased the suit land to the second appellant who subsequently registered it as LRV 2860, Folio 4, Luthuli Second Close, Bugolobi. The respondent filed a suit in the High Court

seeking, inter alia, a declaration that the grant of title over the suit land by the first appellant to the second appellant was void *ab initio*; and an order directing the first appellant to grant the suit land to the respondent. The High Court gave judgement in favour of the appellants. The respondent successfully appealed to the Court of Appeal which found in its favour. The appellants then appealed to the Supreme Court which held, inter alia, that the respondent was a bona fide occupant having entered the land at the time the 1995 Constitution was made. The Supreme Court further held that while the land occupied by the bona fide occupant could be leased to somebody else, the first option would have to be given to the bona fide occupant and as this was not done the suit land was not available for leasing to the second appellant.

41. While Nile Fibre Board Ltd was strictly speaking not a bona fide occupant within the meaning of Section 29 of the Land Act Cap. 227, they were in occupation of the land having been there since 2012 and before that since 1975 through their predecessors in title. Based on the principle in the Kampala district Land Board case, they had the right to be given the first option to apply for a new lease over the suit land.

42. Additionally, in accordance with paragraph 3 of the lease agreement attached to the affidavit in reply, Nile Fibre Board Ltd had an option to enlarge the lease over and above anyone else. The suit land was therefore never available for re-assignment without notice to the second respondent as required by rules 17 to 22 of the Land Regulations 2004. The Supreme Court in the Kampala District Land

Board case held that the respondent in that case (NHCC) was entitled to notice so that they could present objections if they wished.

43. As a result of the error in issuing authority to the CLR to create freehold titles for the applicants, the Secretary Nakasongola District Land Board wrote to the commissioner on 10.7.2018 withdrawing the Board Minute that allocated the applicants a freehold title.

Proceedings before the CLR

44. Turning to the issue of notice to the applicants, I have seen only two authorities on judicial review that counsel for the applicant has provided. **Omukama of Bunyoro Kitara and another v Attorney General and others HCCS NO. 0015 OF 2014** where a notice of cancellation was issued and on the day of the hearing, no hearing took place. The second precedent is **Sebudde Joseph v Inspector General of Government Misc. Cause No. 0032 of 2010** where the court held that denial of principles of natural justice renders a decision a nullity.
45. The amendment order of the CLR and the record of proceedings before the CLR show that a notice was issued to the applicants at their registered post office boxes on 4.5.2021. The order indicates that their attorney Tumusiime Judith presented objections to the cancellation of the applicants' titles. The power of attorney attached to the notice of motion shows that the powers were granted on 10.5.2018 to Tumusiime by the eight applicants long before the proceedings before the CLR commenced. The donors of the power of attorney are: Ssejjinda Anatoli(third applicant); Ssebyole John Paul fourth applicant;

Sserwadda Joseph fifth applicant; Galiwango Augustine eight applicant; Matembe Benjamin ninth applicant; Alma Komuntale twelveth applicant; Alpha Nkunda eleventh applicant; Namuli Margret tenth applicant. Only two applicants, Galiwango Augustine eight applicant and Kalyowa Adam seventh applicant are did not give Tumusiime powers of attorney but this is not an issue because some are joint tenants on the freehold titles.

46. The powers of attorney give the attorney authority to receive court summons, prosecute, defend, represent the applicants in all matters pertaining to the land and suits in the Land Division and all other courts superior . In paragraph 4, it is stipulated that the powers shall be interpreted widely and construed as an express authority to the attorney to act and deal with all affairs connected to court appearances and any other progress pertaining to the land.

47. Regarding the omission by the CLR to call for the duplicate certificate of title as required by Section 91(2), this is directory and failure to call for the duplicate certificates of title was not fatal to the proceedings as Section 91(3) of the Land Act authorizes the Registrar of Titles to dispense with the duplicate certificates of title.

48. The above analysis notwithstanding, the record of proceedings do not indicate attendance. Neither did the CLR produce evidence that the applicants were served through their postal addresses which speaks directly to the applicants' complaint that they were not heard and procedural impropriety.

49. Although there is evidence of procedural impropriety, there is also evidence from Tumusiime that she had wind of what was going to happen. For instance, in paragraphs 13 of her affidavit, on 15.9.2021 of her affidavit in support, she heard from Mr. John Tumeri a lawyer that he had seen her name among some titles in the office of the CLR to be cancelled. She made follow up with the CLR who denied any such move. This was the time for her to make a written request for information or to engage a lawyer.

50. The record of proceedings of the CLR show that the notice went out on 4.5.2021 for the hearing on 9.9.2021 and the decision was rendered on 4.10.2021 six months after the notice issued while the decision was communicated to Kalyowa Adam of P.O. Box 1, Kakooge on 12.10.2021 by Jamila Lunkuse requiring Kalyowa to produce a certificate of title for 83 hectares for cancellation.

51. Counsel for the applicant submitted that the affidavit of Tumusiime disclosed that the CLR concealed proceedings from her and that the decision was rendered on 12.10.2022 when the 60 days' notice was to expire. The first respondent (CLR) did not file an affidavit in reply so I only have one side of the story regarding concealment of proceedings before the CLR.

52. Of course the conduct of the CLR, if indeed it is true that he denied knowledge of an impending cancellation, leaves a lot to be desired

because he is duty bound to observe due process and to treat persons who are the subjects of administrative action fairly as commanded by Article 42 of the Constitution.

53. For the reason that the applicants have not come to court with clean hands, having acquired freehold titles when they were neither lessees nor customary tenants on conversion and having prior knowledge of the impending cancellation but did not proactively take legal steps to pre-empt it, and because the CLR arrived at a correct decision, I will not quash the proceedings based on procedural impropriety but rather I will issue orders on service of notice to affected persons, going forward.

54. **Section 202 of the Registration of Titles Act Cap. 230 (RTA)** provides for how notices issued under the Act should be served .The general principle is that notices are served at the address provided by the registered owner in the register book and if no address is provided, the notice is served at the last known place of abode. Under Section 202(4) of the RTA, the registrar is expected to have proof of service through a memorandum certifying that the notice was served.

55. Under Section 202(6) of the RTA, where a notice is sent by post, the registrar may direct further service of notice by post; direct substituted service or proceed without notice.

56. Evidently, within the fair hearing principles, the registrar has a duty to ensure that an affected person or persons have been duly served before proceeding to make adverse orders against them.

Contempt of court

57. The applicants seek an order for me to declare the first respondent in contempt of court orders, namely, a Ruling in HCMA. No. 609 of 2018 (Arising from Civil Suit No. 308 of 2018) where there is an order to maintain the status quo of the suit land and which order was registered on the title; and a Ruling in HCCS NO. 301 of 2018 which, according to the applicants, determined the ownership of the land in their favour.

58. As submitted by counsel for the second respondent, the decision of **Hon. Setende Sebalu v The Secretary General of the East African Community Reference No. 8 of 2012**, lays down the conditions to be fulfilled before a party can be found in contempt:

- a) The existence of a lawful court order
- b) The potential contemnor's knowledge of the order
- c) The potential contemnor's ability to comply
- d) The potential contemnor's failure to comply.

59. The temporary injunction order that was issued on 14.5.2018 by the assistant registrar Land Division, bound both parties to maintain the status quo; restricted Nile Fibre Board Ltd from opening new fields for planting; restricted Sekitoleko and others to the part of land they occupied and restrained them from constructing new structures on the land or grazing beyond the area they occupy pending determination of the main suit. The status quo was described in the order as:

The applicant is in possession of the suit property planting trees and the respondents are in occupation of part of the suit land grazing animals.

60. Clearly, the temporary injunction did not restrain the first respondent from carrying out their administrative functions as custodians of land titles and correcting errors or cancelling titles that were issued in error or illegally and moreover the temporary injunction was automatically vacated when Civil Suit No. 301 of 2018 was dismissed so there was no order capable of being held in contempt thereafter.
61. Regarding the orders in HCC No. 301 of 2018, my brother Batema J simply dismissed the suit for want of prosecution on 10.7.2020 and was therefore not determined on the merits. Consequently, there is no order which the first respondent could have violated or held in contempt.
62. In summary, although the first respondent (CLR) did not fully comply with the right of the applicants to be heard since the attendance list was never availed, the applicants did not come to court with clean hands having obtained freehold titles when they were neither leases nor customary tenants on conversion to freehold. Furthermore, the second respondent (Nile Fibre Board Ltd) was entitled to be given the first option to renew the lease. For these reasons, I find that in principle, the CLR arrived at a correct decision. Lastly, the applicants failed to prove that the first respondent is in contempt of court.

63. The application is accordingly dismissed and I make the following orders regarding service of notice on affected persons:

- a. Where persons to be affected by orders cancelling their titles are served by registered post, the receipt on posting the notice shall be preserved and produced in court in the event an affected person challenges the decision of the commissioner or any other officer.
- b. The commissioner land registration shall ensure that persons to be affected by adverse orders should be properly served with notice in compliance with the fair hearing principles in Article 28(1) of the Constitution; Section 91(8) of the Land Act Cap.227 and Section 37 of the Land (Amendment) Act 2004.
- c. The applicants shall pay the second respondent Nile Fibre Board Ltd costs of the application.

DATED AT LUWERO THIS 30TH DAY OF NOVEMBER 2023



LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Wagabaza & Co. Advocates and Katende, Ssempebwa & Co.
Advocates for the appellants

K&K Advocates for the second respondent

Office of Titles, Ministry of Lands for the first respondent.

