

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
MISCELLANEOUS CAUSE No. 53 OF 2021**

INTER AFRICA INVESTMENTS LIMITED:..... APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION :..... RESPONDENT

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This application was brought under section 33 and 38 of the Judicature Act, Cap. 13, rules 3(1) & 2, 6(1) and 8 of the Judicature (Judicial Review) Rules, No. 11 of 2009, seeking that:
 - (a) an order for certiorari doth issue quashing the decision of the Respondent to cancel the Applicant's registration as proprietor of land comprised in LRV MKO34 Folio 6 Kyaggwe Block 113, Plots No. 552, 553 and 554;
 - (b) an order of prohibition doth issue restraining the Respondent, its agents, departments, authorities, officials and servants from implementing the findings and orders of the Respondent in so far as they affect the Applicant;
 - (c) a permanent injunction doth issue restraining the Respondent from ever implementing the afore said decision; and
 - (d) costs of the application be provided for.



- (b) on the 11th day of July, 2012, Prince Alexander David Ssimbwa entered into a remuneration agreement in favour of Phillip Muniafu Mukembo by way of a consent judgement recorded by court on the 11th day of July, 2012 vide Miscellaneous Cause No. 13 of 2012, arising out of Administration Cause No. 2505 of 2008;
- (c) by the consent judgement, Phillip Muniafu Mukembo became entitled to 10% of the share claimed by Prince Alexander David Ssimbwa in the estate of late H. H Sir Daudi Chwa II as full and final settlement in remuneration for the provision of legal and technical services;
- (d) the High Court directed that the administrators of the estate of late H. H Sir Daudi Chwa II distribute the estate property but first to clear the credits to M/s Wameli & Co. Advocates within three (3) months from the date of judgement;
- (e) sometime in 2016, M/s Wameli & Co. Advocates filed execution Miscellaneous Application No. 95 of 2016 against the administrators of the estate of the late H. H Sir Daudi Chwa II, seeking orders of execution of the decree obtained in the Family Division Originating Summons No. 9 of 2014;
- (f) the mode of execution was by attachment and sale of the estate land described as Kyaggwe Block 113, Plots 9, 457, 458 land at Nantabulirwa;



- (g) M/s Wameli & Co. Advocates thereafter moved the High Court which issued the orders directing the Commissioner Surveys and Mapping to confirm whether the land comprised in Kyaggwe Block 113, Plots 456 and 458 land at Nantabulirwa belonged to the estate of late H. H Sir Daudi Chwa II and to certify the report and furthermore issue deed plans;
- (h) on 1st June 2015, the Commissioner Surveys and Mapping through Dr. Yafesi Okia issued deed plans and cadastral sheets which indicated that the described land belonged to H. H Sir Daudi Chwa II in his private capacity;
- (i) M/s Wameli & Co. Advocates further applied to court to direct the Commissioner for Surveys and Mapping to avail court all the records of the properties of the late H. H Sir Daudi Chwa II vide High Court Miscellaneous Application No. 278 of 2015, Wameli & Co. Advocates v. the Administrators of the Estate of the late H. H Sir Daudi Chwa II & 3 Others;
- (j) all the records for the land owned by late H. H Sir Daudi Chwa II were presented to court, including land comprised in Kyaggwe Block 113, Plots 9, 457 and 458 land at Nantabulirwa;
- (k) by order of court dated 12th April, 2016, the Deputy Registrar of the Execution Division issued a warrant of attachment and sale of land comprised in Kyaggwe Block 113, Plots 9, 457 & 458 land at Nantabulirwa;



- (l) on the 20th day of October, 2016, the Deputy Registrar of the then Execution Division issued consequential orders directing the Commissioner Land Registration or the Principal Registrar Mukono Zonal Office to process and issue Certificates of Titles for land comprised in Kyaggwe Block 113, Plots 9, 1097, 1098, 1099, 1100, 1101 and 1102 land at Nantabulirwa in the names of the listed respective buyers namely Ubora Holdings, Abubakari Pendo Zubairi, Abdul Karim Hussein, Winfred Bugingo and Luwangula Estates Ltd;
- (m) the orders of the Deputy Registrar were further confirmed by Justice Flavia Senoga Anglin in an ex-parte order dated 2nd day of February, 2017, where the Commissioner Land Registration was found to be in contempt;
- (n) upon the office of titles being served with court orders, it was discovered that the land described in the court order was already titled and owned by several parties including the Applicant, Inter Africa Investments Limited;
- (o) having noticed the anomalies, the office of titles was hesitant to issue the certificates of titles as ordered by court;
- (p) M/s Wameli & Co. Advocates obtained arrest warrants dated 9th February, 2017 and 5th April, 2017 among others against the Commissioner Land Registration for refusing to comply with court orders;

A handwritten signature in black ink, consisting of a stylized 'F' with a large loop at the top and a horizontal stroke extending to the right.

- (q) several attempts were made to arrest the Commissioner Land Registration but were halted by administrative intervention;
- (r) in several correspondences, the Commissioner Land Registration objected to the creation of mailo titles over already existing titles;
- (s) by a notice dated 15th March, 2017, the Commissioner Land Registration informed all parties that had existing titles on the said land including the Applicant, Inter Africa Investments Limited, Mash Investment Limited, Vamee Industries Limited and JK Technologies Limited about the existence of the court orders;
- (t) the leasehold title holders in separate suits sued the Commissioner Land Registration for orders that their titles should not be cancelled and orders were issued therein that cancellation be halted;
- (u) there being parallel orders from the High Court, the Commissioner Land Registration by a letter dated 5th April, 2017, wrote and informed the Deputy Registrar Execution Division about the predicament and sought for guidance on how to proceed;
- (v) the Commissioner Land Registration among other several efforts filed Miscellaneous Application No. 925 of 2019, seeking for stay of execution of the orders but the application was never fixed and the office continued to receive court orders in favour of the creation of the mailo certificates of title on top of among others the title held by the Applicant, until it caved under the weight and force of law;



- (w) H. H the Kabaka of Buganda under Miscellaneous Application No. 1316 of 2017, applied to court objecting to the attachment and sale of Kyaggwe Block 113 Plot 9 included in order of the Deputy Registrar in Miscellaneous Application 2633 of 2016;
- (x) Kyaggwe Block 113, Plot 9 which had been sub-divided to create Plots 43, 34, 35, 29, 17, 18, 25, 20 and other plots all arising from Plot 9 in the names of H. H the Kabaka of Buganda were released from execution and attachment by Hon. Justice Christopher Madrama;
- (y) in 2017, the Commissioner Land Registration was again sued vide Miscellaneous Cause No. 1316 of 2017- Bugingo Wilfred v. Attorney General & 2 Others seeking orders for delivery of titles;
- (z) under hearing notice dated 11th September, 2017, the court further ordered the Commissioner Land Registration to deliver the certificates of title described in the court order dated 2nd February, 2017, to purge himself of the contempt of court;
- (aa) by a letter dated 27th September, 2017, the Solicitor General advised the Commissioner Land Registration to comply with the orders of the court and issue mailo titles as specified in the court order of 2nd February, 2017;
- (bb) when Miscellaneous Cause No. 1316 of 2017 came up for hearing, the learned Judge Justice Christopher Madrama ordered the Commissioner Land Registration Mr. Opio Robert to personally

A handwritten signature in black ink, appearing to be a stylized 'R' or 'K' followed by a flourish.

appear in court with the titles for delivery as specified in the court order;

- (cc) faced with court orders geared towards committing the Commissioner Land Registration in prison, the Commissioner directed that the mailo titles be issued and forwarded to court by a letter dated the 28th day of September, 2017;
- (dd) the Commissioner further informed the registered proprietors that the orders that they obtained stopping the cancellation of their titles were registered as encumbrances and the titles were thereafter delivered to court;
- (ee) under High Court Miscellaneous Cause No. 137, consolidated with Miscellaneous Cause No. 136 of 2017- Luwangula Estates Ltd and Bugingo Wilfred sued the Commissioner Land Registration and others for orders that the encumbrances that were registered on the titles be vacated and the mailo titles be captured on the national lands information system of the Ministry of Lands;
- (ff) Justice Andrew K. Bashaija ordered among others that the Commissioner Land Registration vacates the court orders registered as encumbrances, captures the mailo titles on the information systems and pay one hundred million shillings (UGX. 100,000,000/=) to each of the Applicants;



- (gg) on the 23rd day of March, 2018, the Commissioner Land Registration appealed the court orders of the trial judge and further applied for stay of execution of those orders;
- (hh) Bugingo Wilfred and Luwangula Estates applied for execution of the court orders they obtained which application was heard in complete disregard of the application by the Commissioner Land Registration for stay;
- (ii) by a letter dated 9th April, 2019, the Commissioner Land Registration petitioned the Principal Judge who directed the halting of the warrants against the Commissioner Land Registration and directed that the file be handled by another judge;
- (jj) owing to the heavy costs, the Commissioner Land Registration entered a compromise to comply with the orders to vacate the orders registered on the mailo titles and capture them on the National Lands Information Systems (NLIS) and in exchange the Applicants relinquish their claim for UGX. 100,000,000/= in compensation;
- (kk) it is trite law that two competing certificates of titles cannot exist on the same land and one of them must be cancelled in order to maintain a clean register which is a cardinal role of the Commissioner Land Registration;
- (ll) by a letter dated 9th February, 2021, the acting Commissioner of Land Registration wrote to the registered proprietors of the

leasehold titles including the Applicant referring to a notice dated 15th day of March, 2017 and invited them for a hearing on the 5th day of March, 2021;

(mm) despite service of the letter in the postal addresses provided by the registered proprietors including the Applicant, they failed or refused to attend the said meeting;

(nn) consequently, the Commissioner Land Registration proceeded to amend the register and cause the cancellation of the Applicant's certificates of title;

(oo) the Commissioner Land Registration followed due process as required by law and principles of fair hearing in the cancellation of the Applicant's certificate of titles;

(pp) in applications for judicial review, court is concerned with the decision making process and not the decision itself;

(qq) under judicial review, jurisdiction is exercised by court in a supervisory and discretionary manner;

(rr) it is trite law that prerogative orders will only issue where there is no alternative remedy;

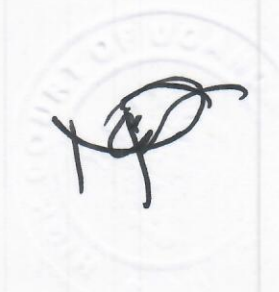
(ss) the Applicant has not demonstrated the lack of or exhaustion of alternative remedies or shown that they are inconvenient, less beneficial or less effective;



(tt) the present application is misconceived, untenable and is an abuse of court process which should be dismissed with costs; and

(uu) it is in the interest of justice, good conscience and equity that the orders sought should not issue.

4. In rejoinder, it was deponed for the Applicant that the Respondent's claim that he served the Applicant by Post Office address is false and not supported with proof of postage. That paragraphs 4-37 of the Respondent's affidavit in reply allude to suits to which neither the Applicant nor her predecessor in title to wit, the Uganda Land Commission, was a party and that the Applicant or her predecessor in title, whose title was in existence but not challenged, is not bound by the said orders.
5. Additionally, that in the alternative but without prejudice to the foregoing, the land titles affected by the said court orders are Block 113, Plots No. 457 and 458 but not Block 113, Plots No. 552, 553 and 554 which constitute the suit land. That the Applicant's land comprised in Block 113, Plots No. 552, 553 and 554 is different from Block 113, Plots No. 457 and 458 and was not affected by the alleged court order as it even never arose from any of Plot 457 or 458 which are for the estate of the late Sir H.H Chwa but is a leasehold issued by the Uganda Land Commission to the Applicant, out of land then described as compartment 14 formerly occupied by the National Forestry Authority till the 17th February, 2011, when the Uganda Land Commission



ordered for a survey of part of it vide Instruction to Survey (IS) No. A 7919.

6. Further, that pursuant to the aforesaid instruction to survey, 200 acres were first surveyed off and allocated Plot No. 452. That the aforesaid Plot 452 was in 2014 resurveyed and cancelled to create Plot Nos. 457 and 458, which border with the pre-existing Plot 9 on Block 113 which was for the estate of the late Sir H. H Daudi Chwa. That Plot 457 was subdivided into 3 Plots to wit, Plot Nos. 477, 478 and 479, while Plot No. 458 was left intact and undivided.
7. That the remaining portion of compartment 14 that had not been plotted, was later plotted to create Plots No. 550, 551, 552, 553, 554 and 555, of which Plots No. 552, 553 and 554 were leased to the Applicant by the Uganda Land Commission and registered in its name. The Respondent later cancelled the titles without notice and illegally under the guise of executing a court order, which was issued in respect of Plots No. 457 and 458 but not 552, 553 or 554.
8. In rejoinder to paragraph 22 of the Respondent's affidavit in reply, the Applicant deponed that the said notice was not brought to the attention of the Applicant through her address well known to the Respondent and that the rest of the paragraphs in the Respondent's affidavit in reply are misconceived, non-responsive and irrelevant to the application.
9. During the hearing of the application, the Applicant was represented by Counsel Wassanyi Sepi and Counsel Sebbowa Francis from M/s



Wassanyi & Co. Advocates. The Respondent was represented by Counsel Twagiramungu Joshua. Both parties filed their written submissions.

10. The Applicant's counsel submitted that the Respondent's failure to serve notice of cancellation of the title upon the Applicant per se contravened Article 28 of the Constitution of the Republic of Uganda, 1995 which alone tantamount to procedural impropriety of the Respondent's decision for which the Applicant seeks an order of certiorari. That neither the Applicant nor its predecessor in title namely the Uganda Land Commission was a party to the cases referred to by the Respondent.
11. That worse still, the said suits referred to by the Respondent were expressly determined in connection with land comprised in Block 113, Plots No. 457 and 458 but not the suit land which is comprised in Block 113, Plots No. 552, 553 and 554. That the suit land is a leasehold issued by the Uganda Land Commission to the Applicant, out of land then described as compartment 14 formerly occupied by National Forestry Authority till the 17th February 2011, when the Uganda Land Commission ordered for a survey of part of it vide instruction to survey (IS) No. A7919. That pursuant to the aforesaid instruction to survey, 200 acres were first surveyed off and allocated Plot No. 452 and the aforesaid Plot 452 was in 2014 re-surveyed and cancelled to create Plots No. 457 and 458, which border with the pre-existing Plot 9 on Block 113 which was for the estate of the late Sir H.H Daudi Chwa.

A handwritten signature in black ink is written over a faint circular official stamp. The signature appears to be 'H. H. Daudi Chwa'.

That Plot 457 was sub-divided into 3 plots to wit, Plots No. 477, 478 and 479, but Plot No. 458 was left intact and undivided.

12. That the remaining portion of compartment 14 that had not been plotted, was later plotted to create Plots No. 550, 551, 552, 553, 554, and 555, of which Plots No. 552, 553, and 554 were leased to the Applicant by the Uganda Land Commission and registered in its name. However, the Respondent later cancelled the titles without notice and illegally under the guise of executing a court order, which was issued in respect of Plots No. 457 and 458 but not 552, 553 nor 554. That the land specifically ordered by court for cancellation is not the Applicant's land and the Respondent's decision is to that extent illegal and irrational.
13. That the Respondent's decision to cancel the certificates of title for land comprised in Block 113, Plot 552, 553 and 554 belonging to the Applicant and which were not included or listed in the court orders, in exercise of its administrative powers under section 91 of the Land Act, made the said decision ultra vires, which justifies the issue of the orders sought. In any event, the existence of the above said court orders does not waive or otherwise deprive the Applicant of its right to be heard before the Respondent can exercise its administrative powers under section 91 of the Land Act.
14. That the Respondent contended under paragraphs 41 and 42 of his affidavit in reply that he issued the notice and effected service of the same in the postal address provided by the Applicant but he did

not attach any annexure to his affidavit in reply to prove his purported service by post. That he did not therefore discharge his burden of proof of service by post as he alleges. Counsel cited the case of **Council of Civil Service Union v. Minister for the Civil Service (1985) AC 374** and **Twinomuhangi v. Kabale District & Others (2006) HCB 130**. That in this case, the Applicant was denied the right to be heard since it learnt of the decision much later after the decision had been taken.

15. The Applicant's counsel argued that it was therefore illegal and irrational of the Respondent to cancel titles not ordered by court. The Applicant's counsel invited court to find that the grounds of procedural impropriety, irrationality and illegality are sufficiently made out in the application and grant the prayers sought by the Applicant.
16. The Respondent's counsel argued that this application does not satisfy the conditions for the grant of orders sought. That under rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019, the court in considering an application for judicial review must satisfy itself that the application is amenable for judicial review when the aggrieved person has exhausted the existing remedies available within the public body or under the law and the matter involving an administrative public body or official among others. That this provision fortifies the long-held position that judicial review remedies are remedies of last resort except in exceptional cases as court may determine in exercise of its discretion.

A handwritten signature in black ink is located at the bottom right of the page. To its right is a faint, circular official stamp, likely from the High Court of Uganda, though the text within it is illegible.

17. That the cancellation of the Applicant's certificate of title was premised on a court order dated the 31st January, 2018 in Miscellaneous Cause No. 137 of 2017 Luwangula Estates Limited and Anor v. Vamee Industries and Others. That this application for judicial review is most inappropriate since court must conclusively deal with the issues of previously given court orders and their implications. Learned counsel referred to the case of **Muganwa Kajura v. The Commissioner Land Registration and Attorney General, Miscellaneous Cause No. 232 of 2019.**
18. Section 91 (10) of the Land Act Cap. 227 as amended provides that any party aggrieved with the decision or action of the Commissioner under this section may appeal to District tribunal within 60 days. That further, the Applicant can appeal the decision of the Commissioner Land Registration in the High Court so that the matter is properly heard before any orders can be made. That all the interested parties who may be affected by the decision of the court should be heard before court pronounces any orders on the changes in title which cannot be done by way of affidavits in judicial review because it requires detailed evidence, cross examination and visiting locus.
19. Also that the Applicant has failed to show that this is the most appropriate and convenient forum to address its grievances and that the effect of allowing this application will contradict courts orders previously given by the High Court at Kampala and will also prejudice

and occasion injustice on parties not party to the instant application. That the Applicant still has other avenues to attain justice.

20. That the office of the Commissioner Land Registration is charged with a statutory duty of maintaining a clean land register and that it flows from this cardinal duty that special powers to cancel certificates of title which are issued illegally, irregularly or erroneously as provided for under Section 91 of the Land Act, Cap 227. That judicial review is concerned with the decision-making process and not the decision itself. Due process of the law was followed in the process that led to the amendment of the register or decision to cause the cancellation of the certificate of title vide LRV MK034 Folio 6 Kyaggwe *Block 113 Plot 552, 553 & 554 owned by the Applicant.*

21. Further, it was averred for the Respondent that in the court order dated 2nd February, 2017 in the case of Wameli & Co. Advocates v. Commissioner Land Registration, the Commissioner was ordered to issue titles for land comprised in Block 113, Plots 1097, 1098, 1099, 1100, 1101 and 1102 of land at Nantabulirwa. However, the Commissioner Land Registration discovered that there were already existing titles on the land including the suit land in this application. That the titles were issued as ordered by court subject to the leasehold interests that were already existing as encumbrances but court further ordered on the 31st day of January, 2018 that the encumbrances be vacated.

22. The Respondent's counsel further stated that by a notice dated 19th February, 2021, the Commissioner Land Registration issued a notice of intention to effect changes on the register to among others, the Applicant inviting them for a public hearing which was to take place on the 5th day of March, 2021 and served via their registered postal addresses but they failed or refused to attend the said meeting. That the Commissioner went ahead to make a decision in the Applicant's absence and issued amendment order dated 5th August, 2021, to cause the cancellation of their respective titles.

23. The Respondent's counsel added that the Commissioner Land Registration acted within the powers provided for under section 91 of the Land Act, Cap. 227 as amended. That due process as envisaged thereunder including communicating the decision was followed to the dot. Counsel prayed that this honourable court finds that this application is misconceived, untenable in law and an abuse of court process which cannot be sustained. That court should find for the Respondent and dismiss the application with costs to the Respondent.

Issue: Whether the application raises sufficient grounds for judicial review.

24. Grounds of judicial review are concerned either with the processes by which a decision was made or the scope of the power of the decision-maker. Under section 36 (1) of the Judicature Act, Cap 13, the High Court may make an order, as the case may be, of mandamus which is an order compelling the Respondent to do

something; prohibition, which is prohibiting the Respondent from acting on something; or certiorari, which is quashing the decision of the administrative body. In **Unzi Godfrey Licho v. Moyo District Local Government & Anor, Misc Cause No. 0097 of 2016**, Justice Stephen Mubiru held that:

“Judicial review of administrative action is a procedure by which a person who has been affected by a particular administrative decision, action or failure to act of a public authority, may make an application to the High Court, which may provide a remedy if it decides that the authority has acted unlawfully.”

25. Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, No. 32 of 2019, lays out the factors to consider in handling applications for judicial review. It provides as follows;

“7A. (1) The court shall, in considering an application for judicial review, satisfy itself of the following-

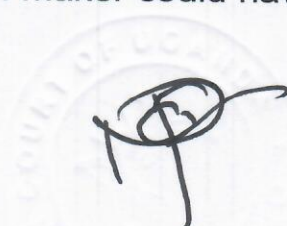
- (a) That the application is amenable for judicial review;*
- (b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and*
- (c) That the matter involves an administrative public body or official.”*

26. Judicial review is concerned with the decision-making process but not the decision itself. It involves an assessment of the manner in which a decision is made and this court exercises its jurisdiction in a supervisory manner to ensure that public powers are exercised in



accordance with the basic standards of legality, fairness and rationality.

27. Administrative decisions are those initial decisions that are made by public bodies, government entities, and statutory bodies. When arriving at administrative decisions, the principles of natural justice which entail a right to a fair hearing and rule against bias have to be applied. The person appearing before an administrative body should be accorded a fair hearing. This entails informing the person about the case against him or her before hearing commences, allowing one ample time to prepare his or her defence.
28. The person should further be allowed to have legal representation if he or she can afford. The hearing should also be expeditious. It should neither be too long to delay justice nor too short to deny someone a fair hearing. The procedure should be seen to be efficient, lawful, reasonable and procedurally fair. It is also important to ensure that the decision-making body is not acting ultra vires in that it should have the mandate and power to make the decision taken. These factors contribute to having a just and fair treatment in administrative decisions.
29. A public authority will be found to have acted unlawfully if it has made a decision on ground of illegality - without the legal power to do so or on ground of unreasonableness or irrationality that is to say so unreasonable that no reasonable decision-maker could have come to



the same decision or on ground of procedural impropriety or unfairness without observing the rules of natural justice.

30. In **Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 375 at pages 410 to 411**, Lord Diplock explained these three grounds of judicial review as follows:

"By 'illegality' as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable. By 'irrationality', I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. 'Irrationality' by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review. I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its



jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

31. Since the Commissioner Land Registration is a public official, his or her decision is subject to judicial review on any of the grounds mentioned above. Therefore, this court has the jurisdiction to allow an application for judicial review when appropriately brought against the decisions of Commissioner Land Registration. In the exercise of his or her powers under the Constitution or the Land Act, the Commissioner is in effect performing an administrative act similar to a quasi-judicial function, which must be exercised fairly and honestly within the ambit of the wide discretion bestowed onto him or her by the existing laws. The Commissioner must act lawfully.
32. The Respondent's affidavit in reply and submissions indicate that the matter concerning the suit land has been heavily litigated. That numerous contrary court orders have been issued by different courts at different stages. It is further contended for the Respondent that the Applicant has not exhausted other alternative remedies prior to making this application as required by law.
33. In the instant application, the Applicant challenged the decision-making process taken by the Respondent on the ground that it was not given a fair hearing prior to the cancellation of its certificates of title by the Respondent. That the Respondent's claim that he served the Applicant by post office address is false and not supported with proof



of postage. Indeed, from perusal of the record of proceeding, I agree with the Applicant's averment that no proof of service on it has been annexed to the Respondent's pleadings.

34. The Respondent claimed in paragraphs 41 and 42 of his affidavit in reply that, by a letter dated 9th February, 2021, the acting Commissioner of Land Registration wrote to the registered proprietors of the leasehold titles including the Applicant referring to a notice dated 15th March, 2017, inviting them for a hearing on the 5th day of March, 2021. That despite service of the letter in the postal addresses provided by the registered proprietors including the Applicant, they failed or refused to attend the said meeting. However, the Respondent has not provided any evidence proving the said service on the concerned proprietors including the Applicant.

35. In my view, this application is concerned with the ground of procedural impropriety. Failure by the Respondent to prove effective service on the Applicant means that there was no procedural fairness towards the Applicant who would in essence be affected by the decision and has indeed been affected by it. I hold that the Applicant was not afforded the right to a fair hearing by the Respondent. However, the question is, are there appropriate remedies other than judicial review?

36. Section 178 of the Registration of Titles Act, Cap 230 provides that



"Any person deprived of land or of any estate or interest in land in consequence of fraud or through the bringing of the land under the operation of this Act or by the registration of any other person as proprietor of the land, estate or interest or in consequence of any error or mis-description in any registered certificate of title or in any entry or memorial in the Register Book may bring and prosecute an action for the recovery of damages against the person upon whose application the land was brought under the operation of this Act, or the erroneous registration was made, or who acquired title to the estate or interest through the fraud, error or misdescription; but—

(a) except in the case of fraud or of error occasioned by any omission, misrepresentation or misdescription in the application of the person to bring such land under the operation of this Act or to be registered as proprietor of the land, estate or interest or in any instrument signed by him or her, that person shall upon a transfer of the land bona fide for value cease to be liable for the payment of any damage which but for the transfer might have been recovered from him or her under the provisions herein contained; and in the last-mentioned case, and also in case the person against whom the action for damages is directed to be brought as aforesaid is dead or has been adjudged bankrupt or cannot be found within the jurisdiction of the High Court, then and in any such case

A handwritten signature or mark, possibly initials, written in dark ink. It consists of a large, stylized 'G' or 'S' shape with a horizontal line extending to the right and a vertical line extending downwards.

such damages with costs of action may be recovered from the Government; and

(b) in estimating the damages the value of all buildings and other improvements erected or made subsequently to the deprivation shall be excluded."

37. Furthermore, Section 183 of the Registration of Titles Act, Cap 230 provides thus:

"Any person sustaining loss through any omission, mistake or misfeasance of the registrar or any other officer or clerk in the execution of their respective duties under this Act or by any error, omission or misdescription in any certificate of title or any entry or memorial in the Register Book or by the registration of any other person as proprietor, and who is barred by this Act for recovery of land, estate or interest, may, in any case in which the remedy by action for recovery of damages as herein provided is inapplicable, bring an action against the Government for recovery of damages; in estimating those damages, however, the value of buildings and the improvements erected or made subsequently to the loss or deprivation shall be excluded."

38. While the Applicant contends that the land titles affected by the numerous court orders are Block 113, Plots No. 457 and 458 but not Block 113, Plots No. 552, 553 and 554 which constitute the suit land, the Respondent on the other hand asserts that the cancellation of the Applicant's certificates of title was premised on a court order dated the



31st January, 2018 in Miscellaneous Cause No. 137 of 2017, Luwangula Estates Limited and Anor v. Vamee Industries and Others. The Applicant's counsel submitted that Block 113, Plots No. 552, 553 and 554 which are the subject matter of this application were leased to the Applicant by the Uganda Land Commission and registered in its name. That the suit land borders the estate of the late Sir H.H Daudi Chwa II but does not form part of the estate as alleged by the Respondent.

39. In **Vamee Industries Ltd v. Commissioner Land Registration & Attorney General Miscellaneous Cause No 2 of 2022**, which is similar to this case, at page 20, this court held on 13th July, 2022 that

"As earlier stated, this matter has been highly litigated and there is a lot of history concerning the suit land. It is in the interest of justice that both the procedure and merits of these orders are fully investigated to their logical conclusion in the presence of all concerned parties. This can only be done in a suit instituted by way of ordinary plaint. As such, I have found no grounds to support this application and it is accordingly dismissed."

It is worthwhile to note that the applicant's appeal to the Court of Appeal vide Civil Appeal No 345 of 2022 was dismissed on 7th August 2023; hence upholding the decision of this court.

40. In the instant application, the Applicant claims that the suit land neighbours that of the estate of Sir H.H. Daudi Chwa II but does not form part of the plots cited in the order executed by the Respondent.



In the interest of justice, these controversies cannot be resolved through affidavit evidence as in this application for judicial review. An appropriate remedy would be an ordinary suit under section 178 or 183 of the Registration of Titles Act, Cap 230 or other laws. In an ordinary suit, the court would be able to consider evidence from witnesses, documentary evidence and visit the locus in quo to ascertain and confirm the claims by all the parties involved in the suit. The court would then determine the appropriate remedies basing on the evidence adduced and the law.

41. Pursuant to the foregoing analysis, this application is hereby dismissed. Each party shall bear their own costs. I so rule and order accordingly.

This ruling is delivered this 27th day of Sept. 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Twagiramungu Joshua from the Office of Commissioner Land Registration, for the Respondent;*
- (2) Mr. Aaron Mayanja Mutale and Mr. Mulondo Vincent both Directors in Inter Africa Investments Limited representing the Applicant;*
- (3) Ms. Pauline Nakavuma, the Court Clerk.*