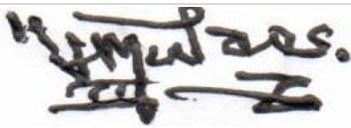




1. An order for extension of the time within which to file an application for Judicial Review of the directives by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent contained in the letter dated 13<sup>th</sup> July 2023 directing the Area Land Committee of Butunduzi Town Council and the 1<sup>st</sup> Respondent not to inspect the applicant's land in respect of which applications for conversion from customary tenure to freehold tenure had been made and review of the 3<sup>rd</sup> and 4<sup>th</sup> Respondent's inability to perform their statutory obligations in relation to the applicant's said application.
2. A declaration that the 2<sup>nd</sup> Respondent's said directives to the 1<sup>st</sup> Respondent by her said letter dated 13<sup>th</sup> July 2023 to wit; halting the inspection of the land in Mukonomura in respect of which the applicant had applied to the Area Land Committee of the 1<sup>st</sup> Respondent is irrational, ultravires, null and void.
3. An order of certiorari be issued quashing the decisions and or directives of the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent in the letter dated 13<sup>th</sup> July 2023 and also quashing any implementation of the same by the 1<sup>st</sup> Respondent's letter dated 15<sup>th</sup> September 2023 without according the applicants the right to be heard.
4. An order of mandamus compelling the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to carry out their statutory obligations by prevailing over and directing the Area Land Committee of the 1<sup>st</sup> Respondent to carry out the required inspection of the applicant's said land and submit the relevant report to the 4<sup>th</sup> respondent as mandated by law.
5. A permanent injunction be issued restraining the 2<sup>nd</sup> Respondent, the Resident District Commissioner Kyenjojo District, her agents and any other person acting under her and or acting under her directives from

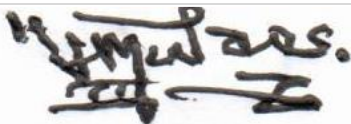


interfering with the Area Land Committee of the 1<sup>st</sup> Respondent , the 2<sup>nd</sup>,  
3<sup>rd</sup> and 4<sup>th</sup> Respondents in the performance of their statutory obligations  
relating to land matters in Kyenjojo District and in particular, relating  
to the applicants' application for conversion of their customary interest  
into freehold interest in their land at Mukonomura Cell, Butunduzi Town  
Council, Kyenjojo District.

**6. An order of exemplary damages against the 2<sup>nd</sup> Respondent, general  
damages against the Respondents and costs.**

The application is supported by the affidavit of Mr. Baguma Julius, the 1<sup>st</sup> applicant  
with written authority from the 2<sup>nd</sup> to the 6<sup>th</sup> applicants who averred as follows:

1. That the applicants own customary interest in land situate at Mukonomura  
Village, Butunduzi Town Council, Kyenjojo District adjacent to Block 193  
and 194. That on 7<sup>th</sup> April 2021, the applicant made an application to the Area  
Land Committee with a view of converting their interests in the suit land from  
customary tenure to freehold and paid the required statutory fees.
2. That after lodging the application, they made efforts to follow up and have  
their land inspected by the area land committee but all in vein. That they later  
through their attorney issued a demand notice to the 4<sup>th</sup> Respondent who  
declined receipt of the same. That after one year of follow up without any  
meaningful results, on 5<sup>th</sup> May 2023, the chairperson L.C.1 wrote letters to  
the District Staff Surveyor requesting the preliminary surveys to be verified  
which he did on 8<sup>th</sup> May 2023.
3. That later on 5<sup>th</sup> July 2023, the Town Clerk of the 1<sup>st</sup> Respondent wrote a letter  
to the area land committee guiding them to go ahead with inspection to no  
avail. That later after a week, when they followed up, they were informed that



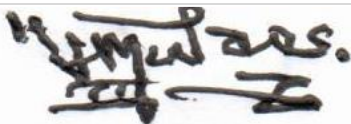
the 2<sup>nd</sup> Respondent had interfered with the process where he directed the 1<sup>st</sup> Respondent to halt any process of titling for land at Mukonomura. That when they inquired on the next course of action, the Town Clerk advised them to seek assistance from other offices.

5 4. That on the 15<sup>th</sup> day of September 2023, the Town Clerk of the Respondent wrote a letter informing them to halt the titling process relying on the letter by the 2<sup>nd</sup> Respondent dated 13<sup>th</sup> July 2023. That during the process of arriving at the decision by the 1<sup>st</sup> and 2<sup>nd</sup> applicants to halt the titling process, the applicants were not accorded a right to be heard.

10 5. That the 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents being public bodies and the 2<sup>nd</sup> Respondent being a public officer, are duty bound to exercise their functions and duties in accordance with the constitution. That the decision of 2<sup>nd</sup> Respondent which was implemented by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to have the applicants' land not inspected was illegal marred with procedural  
15 transgression and an abuse of court process and it is just that the same is set aside.

6. That it is procedurally improper for the 1<sup>st</sup> Respondent to cause the halting of inspection of the said land without a report of the Area Land Committee and the 2<sup>nd</sup> Respondent acted outside the law when he directed that the land should  
20 not be inspected as such this court has powers to grant the orders sought.

7. That inspection of the land is a preserve of the Area Land Committee which is supposed to be independent in execution of its duties under the Land Act. That the actions of 1<sup>st</sup> and 2<sup>nd</sup> Respondent were irrational, ultra-vires and accordingly null and void for faulting the required procedure. That it is in the  
25 interests of justice that this application is allowed.



The application was opposed by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents who contended as follows:

**For the 1<sup>st</sup> Respondent Mr. Asiimwe Charles, the Town Clerk contended as follows:**

- 5        1. That the current application has no basis. That the applicants applied to the Area Land Committee of Butunduzi to inspect the land. On 27<sup>th</sup> March 2023, the 1<sup>st</sup> Respondent received a letter from the National Forestry Authority objecting to the inspection of the land on the ground that it is located within Matiri Forest Reserve. On 13<sup>th</sup> July 2023, he received a letter from the  
10       Resident District Commissioner, Kyenjojo to halt the inspection of the land at Mukonomura because it is within the gazetted area.
2. That in considering applications for conversion of the land from customary to freehold, due diligence must be conducted to avoid mistakes, fraud or illegality. That he was further informed by the Secretary of the 4<sup>th</sup> Respondent  
15       that the land claimed by the applicants falls within Matiri Forest Reserve. That it is illegal for any person including the applicants to claim land that falls within the forest reserve.
3. That since the matter before court involves ownership of land a resolution of the same would require a regular suit and not this application. This application  
20       is baseless, premature and not premised on any cause of action and as such should be struck out with costs.

**Mr. Ssenku Samuel Kimuli, the Chief Administrative Officer of the 3<sup>rd</sup> Respondent averred in response as follows:**

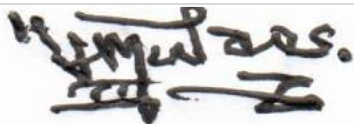
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1. That this applicant was wrongly brought against the 3<sup>rd</sup> Respondent. The duty to consider applications for conversion of land from customary tenure to freehold tenure is within the mandate of the 4<sup>th</sup> Respondent and not the 3<sup>rd</sup> Respondent as alleged by the applicant.
- 5 2. That in considering such applications, the 4<sup>th</sup> Respondent should be independent without directions from any person or authority. The land claimed by the applicants falls within Matiri Central Forest Reserve.
3. That it is the duty of government or local government to hold in trust and protect forest reserves for ecological, forestry and tourism purposes for the  
10 common good of the citizens of Uganda.
4. That the National Forestry Authority raised a complaint after a public notice had been issued by the Area Land Committee of 1<sup>st</sup> Respondent. Issues of ownership of land can be better solved through a regular suit and not through an application like the one before court. It is in the interest of justice that such  
15 application is rejected for being baseless.

**For the 4<sup>th</sup> Respondent, Atugonza Doreen, the Secretary Land Board averred as follows:**

1. That the duty to consider applications for conversion of land from customary to freehold is within the mandate of the 4<sup>th</sup> Respondent who is mandated to  
20 act independently.
2. That due diligence must be conducted when considering applications for conversion from customary to freehold to ensure that they are free from mistakes, fraud and illegality. The 4<sup>th</sup> Respondent has never received any application for conversion to freehold.



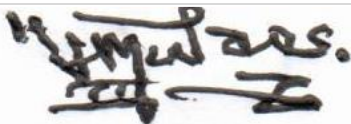
3. That the coordinates for land surveyed by the Kyenjojo Staff Surveyor in the document marked EE to the application exist within Matiri Central Forest Reserve having confirmed so from Kabarole Land Ministry Zonal Offices.
4. That it is illegal for any person including the applicants to apply for certificates of title within a forest reserve. The 2<sup>nd</sup> Respondent informed him that the National Forestry Authority informed him that the said land falls within Matiri Forest Reserve. Matters of ownership should be adjudicated through a formal trial and not through applications of this nature. To grant this application would amount to enabling an illegality to take place which will occasion an injustice to the Respondents and as such this application should be dismissed.

**In rejoinder, it was averred for the applicants as follows:**

1. That the power to inspect land is a preserve of the area land committee and it is after such inspection that the 4<sup>th</sup> Respondent is compelled to act and their application was directed to the area land committee. That the 1<sup>st</sup> Respondent acted illegally when it issued directives on account of orders by the 2<sup>nd</sup> Respondent stopping the area land committee from performing its duties.
2. That the current application is not about fraud or illegality but judicial review as such an ordinary suit is not required.
3. That it was in the interests of justice that the application was allowed.

**Issues:**

- (1) Whether the applicant should be granted leave to file an application for review out of time.
- (2) Whether the application is amenable for Judicial Review.



(3) Whether the applicant has proved grounds that warrant grant of the judicial review remedies sought.

(4) What remedies are available?

**Representation and hearing:**

5 M/s Factum Associated Advocates appeared for the Applicants while the Attorney General's Chambers Fort Portal office represented the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. Both counsel filed written submissions which I have duly considered.

**CONSIDERATION BY COURT:**

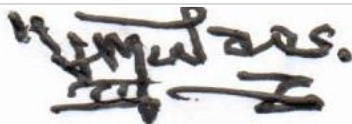
10 **Issue No.1: Whether the applicant should be granted leave to file an application for review out of time?**

Section 36 (7) of the Judicature Act Cap 13 as Amended and Rule 5(1) of the Judicature (Judicial Review) Rules, 2009 provides thus:

15 *“An application for judicial review shall be made promptly and in any case within three months from the date when the ground of the application arose, unless the Court has good reason for extending the period within which the application shall be made.”*

The above law limits the time within which an application for judicial review is to be presented in court to three months from the time the grounds which call for review arose. In *Uganda Revenue Authority v Uganda Consolidated Properties Ltd, C.A.C.A No. 31 of 2000*, Twinomujuni J.A stated that: *“Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.”* Section 36(7) of the Judicature Act and Rule 5(1) of the Judicature

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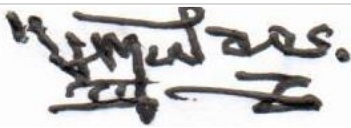
Review rules however provide for “*good reasons for extending the period within which the application shall be made.*”

In *The Registered Trustees of Ker Bwobo Land Development Trust VsNwoya District Land Board, Civil Appeal No. 08 of 2017*, the Hon Stephen Mubiru J stated

5 that: “*An order for enlargement of time should ordinarily be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the Court, has not presented a reasonable explanation of his or her failure to file the application within the time prescribed by Act, or where the extension will be prejudicial to the respondent or the Court is otherwise satisfied that the*  
10 *intended application is not an arguable one. It would be wrong to shut an applicant out of court and deny him or her the right to challenge administrative action unless it can fairly be said that his or her action was in the circumstances inexcusable and his or her opponent was prejudiced by it. In an application of this nature, the court must balance considerations of access to justice on the one hand*  
15 *and the desire to have finality to administrative action on the other.*”

I am also persuaded by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR* which was cited with approval in *Karinga Gaciani & 11 others Vs. Ndege Kabibi Kimanga & Anor, Supreme Court Application No. Eoo4 of 2023* which I  
20 previously cited in *Nelson Basaija v Fort Portal City Service Commission &Anor, HCMA No. 006 of 2023* where it was observed that:

“... *it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating*  
25 *circumstances that can enable the Court to exercise its discretion in favour*



*of the applicant.... we derive the following as the underlying principles that a Court should consider in exercising such discretion;*

*1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;*

5 *2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;*

*3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to-case basis;*

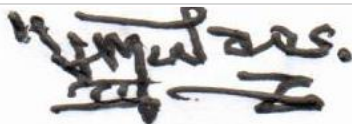
10 *4. where there is a reasonable cause for the delay, the same should be expressed to the satisfaction of the Court;*

*5. whether there will be any prejudice suffered by the respondents, if extension is granted;*

*6. whether the application has been brought without undue delay; and*

15 *7. whether in certain cases, like election petitions, public interest should be a consideration for extending time”*

In this case the grounds for the application appear to have arisen on **13<sup>th</sup> July 2023** when the 2<sup>nd</sup> Respondent in her letter instructed the 1<sup>st</sup> Respondent and the area land committee not to carry out an inspection on the land. On **15<sup>th</sup> September 2023** (Applicants’ Exhibit HH) the Town Clerk of the 1<sup>st</sup> Respondent communicated to  
20 the applicants the position to halt inspection of the land. This application was filed on 21<sup>st</sup> November 2023. The evidence is that although the grounds of the application may have arisen on **13<sup>th</sup> July 2023** this only became known officially to the applicants on or around **15<sup>th</sup> September 2023**. From the affidavit of the applicants,

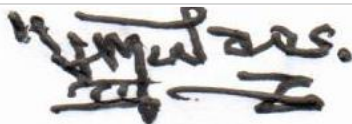


after receiving this communication, the applicants spent some time trying to engage the respondents before filing this application on 21<sup>st</sup> November 2023. I am inclined to find that these circumstances constitute good reasons for extending the period within which the application would be made and thus I would be inclined to grant the order for extension of time within which to file the application for Judicial Review if the issues raised by the applicant are amenable for judicial review.

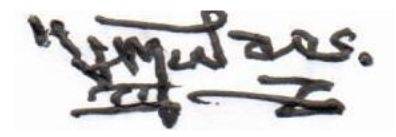
**Issue No.2: Whether the application is amenable for Judicial Review.**

That the applicants claim that they own customary interest in land situate at Mukonomura Village, Butunduzi Town Council, Kyenjojo District adjacent to Block 193 and 194. The applicants now seek to convert their customary interest to freehold and the orders sought in this application seek to achieve this end. On the other hand the actions of the respondents in halting the processes desired and demanded by the applicants through this application, were prompted by an objection from the National Forestry Authority to the inspection of the land on the ground that it is located within Matiri Forest Reserve. This raises a question of ownership of the land in issue.

On **15<sup>th</sup> September 2023** (Applicants' Exhibit HH) the Town Clerk of the 1<sup>st</sup> Respondent communicated to the applicants the position to halt inspection of the land and stated the reasons as being among others that the land was in conflict; this is where the applicants should focus for a remedy. I believe the best remedy for the applicants would lie in pursuing boundary opening for land designated as Matiri Forest Reserve to establish whether the land claimed by the applicants is located within the forest reserve, which would then guide whether the processes demanded by the applicants can proceed. Alternatively and notably, I find that this is a matter that requires a resolution regarding the ownership of the land, which would best be



resolved by a regular suit and not by way of judicial review or affidavit evidence. I find that this application is not amenable for Judicial Review and it fails at this stage. The application is dismissed with no order as to costs.



5 Vincent Wagana

**High Court Judge**

**FORTPORTAL**

**DATE: 25/03/2024**

