

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASAKA**  
**MISCELLANEOUS APPLICATION NO. 116 OF 2023**  
**(ARISING OUT OF MISC. CAUSE NO. 37 OF 2022)**

1. ERINA MUSIIMENTA KATEGAYA  
(Suing through her next friend DIANA KIRUNGI KATEGAYA)  
2. DIANA KIRUNGI KATEGAYA..... APPLICANTS

**VERSUS**

**COMMISSIONER LAND REGISTRATION..... RESPONDENT.**

**Before: HON JUSTICE LAWRENCE TWEYANZE**

**RULING**

**Introduction.**

1. The Applicant brought this Application under S.98 of the Civil Procedure Act Cap. 71, Sections 14(1) & (2) (c) and 33 of the Judicature Act, Rule 5(1) Judicature (Judicial Review) Rules, 2009, Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1; Seeking for orders that Court be pleased to extend time for the Applicants to file an Application for Judicial Review out of time; That Court be pleased to validate the Applicant's Application for Judicial review vide Miscellaneous Cause No. 37 of 2022 and that costs be provided for.
2. The Application is supported by the Affidavit of the 2<sup>nd</sup> Applicant, Diana Kirungi Kategaya, who deponed that on 25<sup>th</sup> April, 2019, the Respondent unlawfully and irregularly made a decision to cancel the Applicants' Certificate of Title for land comprised in Freehold Register, Volume Msk 229 Folio 5, Block 59 Plot 12 At Kirebe "B" Kabula, Lyantonde District. That the Applicants were never invited for any hearing preceding the cancellation and they weren't notified of the decision by the Respondent cancelling their title. That on 20<sup>th</sup> October, 2022, while she had gone to the Land Registry, the 2<sup>nd</sup> Applicant learnt that the Respondent had cancelled their Certificate of Title.
3. That upon learning of the Respondent's decision, the 2<sup>nd</sup> Applicant instructed lawyers of M/s B Edward & Co. Advocates to seek legal redress. That on 2<sup>nd</sup> November, 2022, the said lawyers without seeking leave of Court lodged an Application for Judicial review vide Miscellaneous Cause No. 37 of 2022 in this Court. The Applicants now seek this Honorable Court to extend time within which to file their Application for judicial review and/or validate the same.





4. The Respondent did not file an Affidavit in reply and there is no explanation to that effect. There is an Affidavit of service on Court record deponed by Owange Levy of C/O Tamale & Co. Advocates who stated that he served the Respondent on the 14<sup>th</sup> day of November 2023. I have looked at the return copy of the Notice of Motion which bears a stamp of the Commissioner Land Registration/Court purpose, dated 14<sup>th</sup> November 2023. I am therefore satisfied that there was service upon the Respondent but chose not to file a reply. I will now address the merits of the Application before me.

#### **Representation.**

5. The Applicants were represented by M/s Tamale & Co. Advocates while the Respondent did not appear in this Application despite being served. Counsel for the Applicant filed submissions which I have considered in this ruling. I will only refer to them where necessary.

#### **Issue for determination.**

6. The grounds raised by the Applicants disclose one issue for determination by the Court, namely; **Whether there is good reason for the extension of time within which to make the said Application for judicial review/validate the already filed Application.**

#### **Decision.**

7. **Rule 5(1) of the Judicature (Judicial Review) Rules 2009**, is to the effect that an Application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the Application first arose, unless the Court considers that there is good reason for extending the period within which the Application shall be made.
8. Section 96 of the Civil Procedure Act provides for enlargement of time as a discretionary power of Court. It states that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge that period, even though the period originally fixed or granted may have expired. Section 98 of the Civil Procedure Act provides for the inherent powers of Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.
9. In *Dott Services Ltd and Anor v Attorney General (Miscellaneous Cause No 133 of 2016)*, Musota J restated that rule 5(1) of the Judicature (Judicial review) Rules 2009 gives the Court discretion to extend time and that this must be judicious and based on good reasons, depending on the circumstances of a given case. In that case, the Learned





Justice found that *“the Applicant did not know the adverse report against them until after the statutory time for filing for judicial review had lapsed. It is therefore just that this Application is allowed so that the report is looked into since it raises issues that affect the right of the Applicants and their employees as well as dependants. The Respondent will not be prejudiced in any way if this Application is allowed. Consequently, I will order that this Application be allowed. The Application may be filed within fourteen days of this order...”*

10. In this Application, the reasons put forward by the Applicants are that; They were neither invited for the hearing preceding the cancellation nor were they notified of the decision by the Respondent to cancel their title. That they only learnt of the decision on 20th October, 2022, while the 1<sup>st</sup> Applicant had gone to the Land registry. That upon learning that the Respondent had cancelled the title, the 2<sup>nd</sup> Applicant quickly instructed the former lawyers, M/s B Edward & Co. Advocates to get legal redress.
11. It is further stated that on the 2<sup>nd</sup> day November, 2022, the Applicants’ former lawyers lodged an Application for Judicial review vide Miscellaneous Cause No. 37 of 2022 in this Court. That however, the former lawyers inadvertently lodged the Application for judicial review without first seeking for leave of Court to file the Application out of time and they were advised by their current lawyers to seek leave of this Court.
12. It is clear to me that that the Applicants in person did not know the timelines and their former lawyers did not properly advise them on proper procedure in time before filing an Application for judicial review. That was a clear mistake of Counsel who ought to have sought leave first time before applying for judicial review. Be that as it may, the said decision was made on by the Respondent on 25<sup>th</sup> April 2019 and the 2<sup>nd</sup> Applicant has demonstrated by Affidavit that they got to know of the decision on 20<sup>th</sup> October 2022 and lodged an Application for judicial review on 2<sup>nd</sup> November 2022.
13. The position is that lack of knowledge of a decision is a strong factor influencing the Court’s decision whether an extension of time for bringing the Application for judicial review should be granted. (*See Sadruddin Valmohamed v. Departed Asians Custodian Board and others (Misc. Appl no. 66 of 2020)*).
14. The fact that the Applicants were unaware that their Certificate of Title had been cancelled by the Respondent until after the time limit had elapsed is powerful evidence in relation to the question of whether an extension of the time limit should be granted. The Applicant has availed good reason for the delay in filing an Application for judicial

A handwritten signature in blue ink is written over a circular court seal. The seal contains the text "HIGH COURT" at the top and "JUDICIAL OFFICE" at the bottom. The signature is a cursive script that appears to read "J. M. B. H."

review. This Affidavit evidence is not challenged by the Respondent since there is no Affidavit in reply.

15. The effect of not filing a reply by the Respondent despite being served with the Application is that this Application is unchallenged. In *Energo Projekt v Brig. Kasirye Ggwanga HCMA 558/2009*, my learned brother Murangira J (as then he was) stated:

*"In the case of the Samwiri Mussa vs Rose Achen (1978) HCB 297, Ntabgoba Ag. J. (as he then was); held that "where facts are sworn to in an Affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted."*

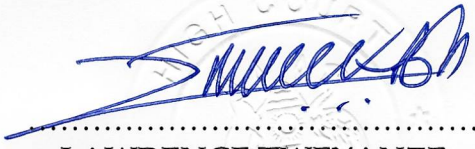
16. By the Respondent's default in filing an Affidavit in reply upon being served with the Application, the Respondent is deemed to have conceded to the contents of the Affidavit in support of the Application. Therefore, unchallenged or uncontroverted evidence will be deemed admitted. (See *Lt. George Kiggundu v Attorney General HCCS 386 of 2014*).
17. This Application and the reliefs sought are unchallenged and the evidence adduced by the Applicants are deemed admitted by the Respondent. In the premises, this Application succeeds.
18. I therefore allow the Application and since directing the Applicants to file a fresh Application for judicial review when there is already an Application filed in 2022, Court hereby adopts/validates the Application for Judicial Review in Miscellaneous Cause No. 37 of 2022 that was filed on 2<sup>nd</sup> November 2022.

19. I also order that the parties appear in Court on the 18<sup>th</sup> April 2024.

No orders as to Costs.

I so order.

Ruling signed and delivered by email this 9<sup>th</sup> day of April, 2024

  
.....  
LAWRENCE TWEYANZE

JUDGE.

9<sup>th</sup> April, 2024.