

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. CAUSE NO. 150 OF 2013
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
BY
LUWERO TOWN COUNCIL ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS
ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON JUSTICE ELDAD MWANGUSYA

RULING

This is an application for Judicial Review brought under Rules 3, 4 and 6 of the Judicature (Judicial Review) Rules seeking orders that:-

- a) A prerogative order of certiorari be granted to quash the report of the Inspectorate of Government and the directive of the Chief Administrative Officer, Luwero District in the letter dated 12th August 2011.
- b) An order of prohibition forbidding the implementation of the recommendation contained in the said letter.
- c) Costs of this application be provided for.

The application is supported by the affidavit of Muluuta Mugagga, Town Clerk, Luwero Town Council and grounded as follows:-

- 1) The report contains matters which are before the High Court, Kampala (Land Division) Civil Suit No. 193 of 2009 touching the Land at Nakazzi between THE APPLICANT VIZ; LUWERO DISTRICT ADMINISTRATION VS REV GOERGE LUBEGA and IRENE KAJUMBA.
- 2) The said investigations and findings are prejudicial to the above said suit.
- 3) The applicant is aggrieved by the report as it touches some facts and the allegations that are contained in the said suit and their recommendations therein largely affects the credibility of the witnesses of the applicant in the said Civil Suit.
- 4) The applicant was never given an opportunity to defend the allegations nor was its officials given any opportunity to be fairly heard on the complaints.
- 5) The applicant contends that the issues raised in the report are a matter of law and related to land transaction between different parties and have no jurisdiction to interfere with them and if the respondent has jurisdiction, it did not act judicially.
- 6) That it is fair and just that the applicant be allowed and the orders sought be granted by this Honourable Court.

The affidavit of Mr. Muluuta Mugagga, the Applicant's Town Clerk is reproduced hereunder:-

1. That I am a male adult of sound mind, the applicant's Town Clerk in which capacity I swear this affidavit as follows:-
2. On the 12th August 2011 the respondent communicated its investigation report of alleged theft of Luwero Town Council's Land by the Chairperson and made recommendations against me and other Town Council Officials (A COPY OF THE REPORT IS ATTACHED AND MARKED AS ANNEXTURE "A").
3. That as a Town Clerk, when I saw the report, I convened the executive meeting of the Town Council to discuss the report.
4. That the Executive Committee was alarmed by the contents of the report which was hinging on the Town Council's Land at Nakazzi which is a subject matter of Civil Suit in High Court vide c/s No. 193 of 2009 REV LUBEGA GEORGE AND ANOR VS LUWERO TOWN COUNCIL.
5. That it was resolved that the matter be brought to the attention of court as it prejudices our defence in the said suit as it claimed against the Town Council by the plaintiffs in the case that we are trespassers on the same (SEE COPY OF THE EXECUTIVE COMMITTEE RESOLUTION, PLAINT AND DEFENCE IN THE SAID SUIT ATTACHED AS ANNEXTURE "B", "C" AND "D" RESPECTIVELY).
6. That upon reading the report, I was particularly concerned with the directive stopping the Executive Director of UGANDA NATIONAL AUTHORITY (UNRA) that he should not deal with the applicant on the said land as the ownership of the same was uncertain.

7. That I was advised by our Town Council lawyer, MR. ABAINÉ JONATHAN which I verily believe to be correct that the recommendations and statement directly implying that the land in question does not belong to Luwero Town Council and it was sold to UNRA, issues are still subject to the above said suit.
8. That the report touches some facts and allegations that are contained in the said suit and their recommendations therein largely affects the credibility of the applicant's witnesses on the said suit.
9. That the issues raised in the report concerns land sale transactions which are a matter of law and the respondent has no jurisdiction to interfere with them and if it has jurisdiction it did not act judicially.
10. That the respondent was urged to take action on the report being the legal representative of Government and the Inspectorate OF Government did not comply (A COPY OF THE LETTER IS ATTACHED AS ANNEXTURE "E")
11. That I am further advised by our said counsel herein which advice I believe to be correct that the INSPECTORATE OF GOVERNMENT is longer enjoined with corporate personality to sue or be sued and this suing the Attorney General as Government Legal Representative, the INSPECTORATE of Government being a Departmental Government.
12. That it is just, fair and in the interest of justice that the application be allowed and the orders sought therein be granted by this Honourable Court.

13. That I swear this affidavit in support of an application for judicial review against the foresaid report recommendations therein and the directive to the Chief Administrative officer.

14.

In reply to the above affidavit in support of the application Ms Bayiga Irene a State Attorney in the Attorney General's Chambers deponed that the application had no merit was frivolous vexatious and bad in law. She asserted that Inspectorate of Government had the mandate to investigate the conduct of the employees of Luwero Town Council a matter that has nothing to do with the suit now pending in court and nothing to do with the applicant Council.

In this trial the applicant was represented by Mr. Jonathan Abaine while the Attorney General was represented by Ms Gorreti Arinaitwe, a State Attorney.

In his submissions Mr. Abaine Jonathan contended that the investigations by the IGG were commenced when there was a pending suit which contravenes S. 19 of the Inspectorate of Government Act, 2002. The provision is cited hereunder:-

"S. 19 Limitation of investigations by Inspectorate.

1. ***The Inspectorate shall not have power to question or review any of the following matters:-***

- (a) a decision of any court of law or of any Judicial Officer in the exercises of his or her judicial functions**
- (b) the decision of any tribunal established by law in the exercise of its functions.**
- (c) any civil matter which is before court at the commencement of the Inspectorate's investigations.**
- (d) Any matter relating to exercising of the prerogative of mercy; or**
- (e) Any matter the review or investigation of which has been certified by the president as likely to:-**
 - i) be prejudicial to security, defence or international relations of Uganda; or**
 - ii) involve the disclosure of proceedings and deliberations of the cabinet or Committee of Cabinet relating to matters of a secret or confidential nature and would be injuries to the public interest.**

2.”

The applicant's contention is that the investigations were commenced when there was already a case pending in the High Court, Land which is the subject matter of the investigations. The findings, conclusions and recommendations are directly touching the process of the sale of the land and the process involved. All the processes involved are part and parcel of the contentions in the main suit. The officials involved are officers of the applicant who are at the same time the witnesses in the Civil Suit (no. 193 of 2009).

The applicant contended further that once there is a case in Court the Inspectorate of Government is prevented by Section 19(1) of the IGG Act from investigating it. The rationale being that it would be prejudicial to the case pending in the court and the credibility of the witnesses would be affected by the report because it is an official document which could be admitted in evidence. He cited the conclusions and observations of the report in clauses 6, 7 and 8 and stated that the entire report is the land in issue and the recommendations are intertwined. The report further determines the case in favour of the plaintiff who is a private individual as against the government. Counsel was of the view that these matters would be duly adjudicated upon in the Civil Suit where evidence would be adduced, cross examination conducted and a decision taken on the contention of the parties in the suit. He further submitted that the Inspectorate report is aiding one of the parties in the suit and it would be unfair to the applicants herein who are the defendants in the other suit because its officials cannot be divorced from the process. He contended that the matter is subjudice and concluded by inviting this court to grant the orders sought with costs to the applicant.

In her submission in opposition to the application Ms Gorreti Arinaitwe contended that orders of certiorari and prohibition cannot issue against mere findings, recommendations, suggestions and observation but against a decision. She cited the authority of **DOTT Services Ltd Vs Attorney General and Auditor General (Misc Cause No. 125 of 2009)** (unreported) where Hon Justice V.F Musoke Kibuuka when considering a report by the Attorney General held thus:-

“certiorari issues to quash decisions made by a statutory body or by a public officer or an inferior court or tribunal. It cannot issue against mere finding, recommendations, suggestions or

observations. In the instant application the report of the second respondent against which the prerogative order certiorari is being sought clearly contains no decision that can be quashed by way of issuance of certiorari.....” I agree.

The Court was availed a copy of the report addressed to the CAO Luwero District, that is alleged by the applicant to contain a decision that ought to be quashed by this court:-

REPORT ON ALLEGED ABUSE OF OFFICE BY THE CHAIRPERSON LUWERO TOWN COUNCIL AND THE ASSISTANT PHYSICAL PLANNER

The report gives details of the investigations as established by the inspectorate of the alleged sale of a piece of land located at Nakazzi to Uganda National Road Authority, which took possession of the same in 2009 in the presence of the Chairperson LC III and the assistant Physical Planner, among other town officials. All this was before a valuation report of the property/developments on the land was produced by the Government Valuer among other irregularities. In view of the findings, the inspectorate recommended that ;

- 1. Mr. Muluuta Mugagga should be submitted to the District Service Commission for appropriate disciplinary action for violating procurement regulations while executing the sale of Nakazzi land to UNRA.**

2. **The Town Clerk, Luwero Town Council should submit Nakatto Prossy to the District Service Commission for appropriate disciplinary action for uttering false documents with intent to conceal fraud.**
3. **Luwero Town Council should speed up the process of acquiring the land title for Nakazzi land and conclude the sale of the land to UNRA.**
4. **Mr. Omwero David Wilber, Town Treasurer should refund to Nakatto Prossy within two months, UGX 1,260,000= which he irregularly obtained from the cashier and has never paid to Nakatto Prossy, which she was forced to falsely account for.**
The Town Clerk should also submit, Mr. Omwero Wilber to the District Service Commission for appropriate disciplinary action for mismanaging public funds and violating Section 42 and 48(1) of the Local Government (Financial and Accounting) Regulations, 2007
5. **The Town Clerk, Luwero Town Council should warn, Nakiranda Rukia to desist from violating the Local Government (Financial and Accounting) Regulations.**
6. **The Town Clerk, Wobulenzi Town Council should warn Mugoya Ben to stop executing private work during official working hours.**

These are the 'decisions' that this court is being asked to review.

But in my view there is nothing in these recommendations that is reviewable by this court. There is nothing in these recommendations that contravenes S. 19(1)(c) of the IGG Act because the report does not question or review the civil matter that is pending in court. It is a misconception that the report will

be used in court against the application even if it was relevant which it may not be. It is not binding on the trial court but if any party sought to rely on it the court would be duty bound to evaluate it before relying on it.

I wish to observe that this application is being used to protect the individuals that are supposed to face disciplinary sanctions for acts they may or may not have committed.

I am sure that before they are disciplined they will be given an opportunity to be heard. The disciplinary actions recommended cannot have any bearing on the court case whose trial would not be prejudiced as alleged in this application.

In the circumstances this court finds no merit in this application which is dismissed with costs to the respondent.

Eldad Mwangusya

J U D G E

21.01.2013