

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISCELLANEOUS CAUSE NO. 003 OF 2014**

5

**GOSH**

**ZEIN ::**

**::: APPLICANT**

10

**VERSUS**

**JINJA DISTRICT LAND**

**BOARD:::RESPONDENT**

15

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**RULING**

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This Application for Judicial Review is brought under Article 28 (1), 42, 45 and 50 of the Constitution, Section 36 (1) of the Judicature Act and Rules 3 (1) (a) and 6 (1) and (2) of the Judicature (Judicial Review) Rules, 2009.

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It seeks Prerogative Orders namely:

- a) Certiorari to quash the order of the Respondent rescinding a lease offer and extension thereof which had been made in favour of the Applicant.

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- b) A Declaration that the said rescinding of the lease offer and refusal to grant an extension thereof is illegal, null and void.
- 5 c) An Order of Mandamus directing the Respondent to reinstate and allow the Applicant to continue and process Title for the land.
- d) An Injunction restraining the Respondent from  
10 interfering with the Applicant's ownership, possession, use and/or occupation of Block 2, Menya Road.
- e) Consequential orders.

15 The events leading to this Application (which are not disputed by both parties) are that one Fred Baziba was allocated land comprised on Block 2, Menya Road at Walukuba, Masese Division under Minute JDLB 46/12/2008 dated 8/12/2008. The said Fred Baziba sold the same land  
20 to the Applicant who obtained a consent to transfer from the said Fred Baziba and an extension of the lease offer to 20 years under Minute JDLB/2453/2013.

On 29/1/2014, the Applicant was informed that the  
25 Respondent had rescinded/withdrawn the minute consenting to the transfer and extension of the Lease offer.

The Applicant alleges that the decision above was influenced by a report of the area Land Committee of Walukuba Division which had not given the Applicant a hearing. The Applicant  
5 claims that apart from denying him a hearing, he has been treated unfairly, the decision is unconstitutional, ultra vires and unfair.

The Respondent claims that the original allocate, Fred  
10 Baziba did not follow the procedure in acquiring the land. Further that the instant Applicant did not also comply with the conditions spelt out in the lease offer which include acceptance of the offer in writing within 45 days plus an accompanying payment totaling to Shs.6,370,000/-. There  
15 is no acceptance and the payment was made after the expiry of the 45 days.

Thirdly that the lease was granted subject to the land being available and free from disputes.

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The Respondent also argues that the area Land Committee of Walukuba, Masese Division area also made a Report that the land offered to the Applicant had earlier on been surveyed and subdivided into Plots which were allocated to

33 developers some of whom had even acquired Certificates of Title thereto. So the land was not available to be leased.

Finally that according to the Report referred to above, Fred  
5 Baziba who sold to the Applicant had acquired the land irregularly or improperly.

Judicial Review is concerned not with the decision of a public or Administrative body.

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It is about the decision making process.

It involves the assessment of the manner in which the decision is made. It is not an appeal and the jurisdiction is  
15 exercised in a supervisory manner not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic principles of legality, fairness and rationality. Ref: **Kasibo Joshua Vrs. Commissioner of Customs - Misc. Application No. 44/2004.**

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In the instant case, the Applicant challenges the manner in which a decision was taken to cancel his lease offer without giving him an opportunity to be heard.

The Applicant makes reference to **Denis Bireje Vrs. Attorney General - MC. 190/2004**, where it was held that the decision maker must act in accordance with the law, fairly, reasonably,.....an administrative action will be subject  
5 to judicial control for illegality, irrationality and procedural impropriety.

The Applicant argues that the letter he received from the Respondent communicating the decision to cancel the lease  
10 offer amounts to a decision that warrants Judicial Review.

Further that Article 28 (1) and 44 (c) of the Constitution were violated.

15 The Applicant further argues that the said decision was illegal.

It is submitted that the original allocate had complied with the terms of the offer by paying the premium amounting to  
20 Shs.14,500,000/-. He sold his interest to the instant Applicant which was duly consented to by the Respondent and the lease offer was extended to a period of 20 years. The Respondent did not accordingly have powers to withdraw the allocation. He also argues that the  
25 Respondent acted irrationally.

That the Respondent acted on unsubstantiated claims of the area Land Committee which were full of falsehoods.

5 The Respondent submits that since the Applicant did not comply with the conditions of the lease by not paying the requisite dues within 45 days then the document he relies on is invalid. There was no acceptance and the dues were paid out of time. The Applicant accordingly has no locus standi in  
10 this matter.

Regarding the right to be heard, reference is made to **Mpungu & Sons Transport Ltd. Vrs. Attorney General & Kambe Coffee Factory Ltd. SCCA 17/2001**, where it  
15 was held that the Applicant must prove that he had such a right.

One must prove that his right to be heard has been breached. In **Russel Vrs. Norfolk (1949)1 ALL E.R 109**,  
20 it was held that the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with.

It is submitted that the Applicant had no such right. First that the lease offer was conditional (explained previously) i.e. to acceptance and the land being available. That since the land was not available (having been allocated to 33  
5 other people previously) then the Respondent as the controlling authority had a right to withdraw the offer within the terms of the offer without hearing the Applicant.

Further that even if he had been heard, the results would not  
10 have been any different, the land not being available.

Regarding remedies, it is submitted for the Respondent that the said remedies are not available because the dispute arises out of contract i.e. lease offer, acceptance and  
15 consideration. That this is a matter of contract i.e. private Law. It is not a matter of Administrative Law to warrant prerogative orders. Ref: **Law Vrs. National Grey House Racing Club Ltd. (1993) 3 ALL E.R 300.**

20 Finally it is submitted that it will not serve the interests of justice to grant prerogative Orders to an individual against the interests of 33 developers already in occupation. That the Applicant is neither in possession nor occupation of the suit land.

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Considering the submissions and circumstances of this case, it's necessary to quickly give a summary of the essence of Prerogative Orders. In **Jet Mwebaze Vrs. Makerere University Council & 2 others**, they were summarized as follows:

- a) Certiorari issues to quash a decision which is illegal ultra vires or vitiated by an error on the face of the record.
- 10 b) Mandamus is an order issued in order to compel performance of a statutory duty or that issued to compel public officers having responsibilities to perform duties imposed on them by statute.
- 15 c) An Injunction issues to prevent and forbid the commission of an unlawful act.

It is important to consider that the power to grant the above orders is discretionary and that they said orders are aimed at public or statutory bodies in the exercise of their public mandate.

In the instant case it was upon the Applicant to prove to Court that certain rights have been violated by the Respondent in the exercise of its public duties. The Applicant went into a private arrangement with the previous

allocatee of the disputed Plot/Block. He then sought to regularize his takeover of that allocation by obtaining a consent from the controlling authority, and obtaining an extension of the Lease offer. All these were done but  
5 conditional upon;

- 1) The acceptance within the terms of the offer and
- 2) The availability of the land.

It appears from the records availed that while the original  
10 allocatee had a Lease offer, the Respondent went ahead and allocated the land to 33 other developers. This was done around May 2013 up to December. The Applicant sought to extend his Lease offer and it was granted on 28/11/2013.

15 It is as a result of those prior allocations that the Respondent withdrew the Applicant's Lease offer. The question then is whether the Applicant has any locus to file for the Prerogative orders since what he claims as violations or cancellation of his Lease offer is based on a non-existent  
20 locus/status. There was nothing to extend.

Secondly, the Respondent acted on information of irregularities in acquisition of the land by the earlier allocatee.

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The Respondent is faulted for having misled the Applicant by consenting to the transfer and extension of the offer. Even if he had complied by accepting and paying in time which he apparently did not, there would have been nothing for him to  
5 take and develop. Ref: **Janet Kobusingye Vrs. Uganda Land Commission - Land Division MA. 28/2013.** The Respondent attempted to re-allocate the Applicant's land to another developer. The Applicant instituted a suit when the Respondent offered alternative land but it was not  
10 equivalent to the Applicant's original land.

An order of Mandamus was issued to compel the Respondent to give the Applicant land that was equivalent to what the Respondent had re-allocated.  
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This authority is different in that the Applicant in the case had proper allocation of land with all the requisite processes complied with.

20 In the instant case the Applicant does not. It should have been the original allocatee - Fred Baziba who should have been the right party to bring the Respondent to Court. As matters stand, the Applicant seems to have been conned by either the said Fred Baziba or the Respondent which  
25 purported to extend a non-existent Lease offer.

Looking at all the circumstances as outlined above, the Applicant has no basis for praying for Prerogative reliefs. At best he has a cause of action for refund of what he has spent  
5 and may be General damages against the Respondent and the first allocatee - Fred Baziba. The whole dispute is more of a commercial transaction than an administrative function by the Respondent. This Application is dismissed for not being sustainable.

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Due to the circumstances of this matter, each party will meet their own costs.

15 **Godfrey Namundi**  
**JUDGE**  
**28/04/2015**