

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. CAUSE NO. 40 OF 2017

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

EXCELLENT ASSORTED MANUFACTURERS LTD.....APPLICANT

V

THE COMMISSIONER LAND REGISTRATION.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicant applied for judicial review under section 36, 41, and 42 of the Judicature Act , rules 3, 4, and 6 of the Judicial Review rules and section 98 of the Civil Procedure Act.

The company sought the following orders:

1. Certiorari to quash the decision of the respondent to cancel the applicant's certificate of title for land comprised in FRV 1352 folio 5 Kibuga block 21 plot 302 Busega.
2. Prohibition to stop the respondent or respondent's agents or anyone acting under the authority of the respondent from enforcing the decision to cancel the applicant's certificate of title for the said land

The application was supported by the affidavit in support of Ephraim Ntaganda.

The applicant was represented by Kabega, Tumusiime & Co. Advocates .

The respondent filed an affidavit in reply of Kabira Aisha and was represented by Mr. Moses Sekitto, Registrar of Titles.

The applicant's case

It is the applicant's case that he is the registered proprietor of land comprised in FRV 1352 folio 4 Kibuga Block 21 plot 302 at Busega and that by letter dated 13.2.2017 , the respondent communicated a decision to cancel the said certificate of title .According to Mr.

Ntaganda, the respondent acted illegally when the matter was sub judice; the decision was irregular as the applicant was not accorded an opportunity to be heard, the respondent was treated unfairly and the decision is irrational.

The respondent's case

The respondent's case is that the letter of 13.2.2017 is not a decision and merely an opinion of its author and in response to a letter from UNRA ; the respondent has not taken any decision and the certificate has not been cancelled . It was further the respondent's case that while the certificate has not been cancelled, the respondent has formally commenced proceedings to cancel it within its statutory mandate in section 91 of the Land Act cap. 227.

Two issues were framed by the applicant's counsel in his submissions.

1. Whether the respondent made a decision to cancel the applicant's certificate of title for the land comprised in FRV 1352 folio 5 Kibuga Block 21 plot 302.
2. If so , whether the applicant is entitled to Judicial review orders of certiorari and prohibition.

Whether the respondent made a decision to cancel the applicant's certificate of title for the land comprised in FRV 1352 folio 5 Kibuga Block 21 plot 302.

In **Chief Constable of North Wales Police v Evans [1983]3 ALL E R 143**, the House of Lords held that judicial review is intended to protect individuals from abuse of power by authorities both judicial and quasi judicial but it is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions.

The House of Lords went further to state that the function of the court is to ensure the individual receives fair treatment.

Article 42 of the Constitution confers on every person the right to be treated fairly by public bodies or officials and a further right to apply to court for a remedy if treated unfairly.

Black's law dictionary 9th edition defines a decision as

‘A judicial or agency determination after consideration of the facts and the law, especially a ruling or order or judgment by a court when considering or disposing of a case.’

Such a decision must have a finality about it . In **Hon. Justice Anup Singh Choudry v AG MC. No. 74 of 2012**, in which the applicant sought judicial review of the process by which the Judicial Service Commission arrived at a decision to recommend appointment of a tribunal to inquire into his conduct, the court found that this was a decision or an act which had the effect , if acted upon, of having the judge suspended from the performance of the functions of a judicial officer.

In **Council of Civil Service Unions and others v Minister for the Civil Service [1985] AC 374** , where the Minister exercised prerogative powers to deprive civil servants of benefits of trade union membership, the House of Lords found that the decision was susceptible to judicial review. The Minister had issued an instruction without consulting the staff.

The House of lords further held that the determining factor whether the exercise of power was subject to judicial review was the justiciability of its subject matter rather than its source.

In the instant case, the author of the impugned letter dated 13.2.2017 to the Director of Legal Affairs UNRA expressed an intention to commence formal proceedings into the cancellation of the certificate of title. That letter was addressed to a third party and copied to the applicant.

It reads in part

‘... since we are not party to the suit referred to in your letter, am of the considered opinion that the process of having the said title cancelled basing on grounds cited should commence.’

On 2nd March 2017, the same author Mr. Opio formally invited the applicant to a public hearing on 22.3.2017 to consider cancellation of the title in FRV 1352 folio 5.

Clearly, formal proceedings were to begin on 22.3.2017 which means no decision has been made to cancel the title as the applicant wants this court to believe. An expression of an intention to commence the legal process under section 91 of the Land Act ,is not a decision within the meaning of authorities cited above. For this court to hold otherwise would be to

gag the respondent and prevent him from freely taking preliminary steps to address anomalies in titles .

Secondly, the letter dated 13.2.2017 did not have the effect of cancelling the applicant's title. Indeed the affidavit in reply of Kabira Aisha shows that the title is still in the names of the applicant. The impugned letter simply had the effect of kick starting a formal and authorised process under section 91 of the Land Act.

In summary, I find that no decision was taken by the respondent to cancel the applicant's certificate of title in the letter dated 13.2.2017.

The intention to commence formal proceedings was a lawful exercise of power conferred by section 91 of the Land Act.

Section 91(1) confers special powers on the registrar of titles to alter or cancel certificates of title on the grounds set out in section 91(2) .

It is the first step in the exercise of this statutory power.

For the court to take that exercise of power at a preliminary stage as a decision is to stretch the definition of decision. An expression of an intention is meaningless when not accompanied by action. It remains an intention.

Whether the applicant is entitled to Judicial review orders of certiorari and prohibition.

Having found that no decision was made by the respondent in the letter dated 13.2.2017, it is unnecessary to discuss this issue. Nevertheless, I note that counsel discussed grounds for judicial review under this issue when these should have been discussed under the first issue.

In particular, counsel for the applicant referred to the pendency of **HCCS. No. 165 of 2015** between the applicant and UNRA in which the legality of the said certificate of title is in issue . Counsel submitted that as the dispute is sub judice, the respondent should not carry out a public hearing into its cancellation.

This is a wholly different legal point being raised by the applicant . The application before me is for certiorari to quash an alleged decision of the respondent to cancel the certificate of title. It is also for prohibition stopping anyone from cancelling the certificate of title.

The grounds of the orders sought have been traversed and a decision made that no 'decision' was taken by the registrar of titles to cancel the certificate.

For counsel to ask me to look into whether the alleged decision is sub judice is going outside the parameters of judicial review. **In Sarah Kulata v AG MA. 865 of 2016** I held that disciplinary proceedings could proceed against the applicant in that case even though an application for judicial review was pending before me. I argued in that case that the disciplinary proceedings were authorised by statute and judicial review would not be used to frustrate that process. Similarly, just because the certificate of title is in issue in a pending litigation does not entitle the applicant to a remedy in judicial review.

Sub judice simply means 'before the court'. Therefore, even if the alleged decision is sub judice, it does not make it susceptible to judicial review but rather to other civil processes like contempt or better still, to interlocutory orders within the specific court proceedings under way.

In the result, I dismiss the application with costs to the respondent. The interim order issued on 16th March 2017 is hereby vacated.

DATED AT KAMPALA THIS 29TH DAY OF JUNE 2017

HON, LADY JUSTICE H. WOLAYO