

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]

MISCELLANEOUS CAUSE NO. 98 OF 2019

1. HEZEKIAH MUKIIBI

2. JONATHAN MAGALA=====APPLICANTS

VERSUS

THE COMMISSIONER LAND REGISTRATION=====RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This application for Judicial Review is brought under the enabling provisions of Articles 28 (1), 42 and 44 (c) of the Constitution of the Republic of Uganda, 1995. It is also brought under the provisions of Section 36 of the Judicature Act, Cap 13 and Rules 3, 4, 6, 7 & 8 of the Judicature (Judicial Review) Rules, 2009 for orders of judicial review reliefs. As follows:

1. An order of certiorari calling the record of proceedings and the decision of the 1st respondent arbitrarily and illegally amending the register and cancelling the applicants, registration as proprietors of all the land known as and comprised in Kyadondo Block plot Numbers 8151,8152,8153 and 8154.
2. A consequential order requiring the 1st respondent to restore the register and reverse the cancellation of the applicants' titles to all that land comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153, 8154.
3. A permanent injunction restraining the 1st respondent from illegally cancelling or otherwise interfering with the applicants' ownership, registration and proprietorship of all that land known as and comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154.

4. A declaration that the applicants are the duly registered proprietors in respect of all that land known as and comprised in Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154.
5. A declaration that the respondent's impugned actions are in contempt of court.
6. An Order requiring respondent to appropriately compensate the applicants in general and exemplary damages.

The grounds upon which the application is set are laid out briefly in the Notice of Motion, and expounded upon in the affidavit of Hezekiah Mukiibi, the Applicant. Those grounds being;

1. The applicants in March 2019, through their then lawyers' post office Box received notice from the 1st respondent that their certificates of title to all that land known as and comprised in Kyadondo Block 185 Plot Number; 8151, 8152, 8153 and 8154 were cancelled and register accordingly amended without;
 - (a) Any prior notice to them;
 - (b) Affording them a hearing.
2. That contrary to the assertions in the notice, the applicants have never been given any notice of any complaint on the 14th day of December 2018 or at all prior to the impugned notice nor have they ever been invited nor been present at any hearing, before the cancellation of the land titles.
3. The respondent acted illegally, ultra vires the Land Act Cap 227 and the Registration of Titles Act, without just cause, unreasonably and unconscionably when they amended the register and cancelled the applicants' certificate of title.
4. The impugned actions of the respondent are *sub-judice*, contrary to Article 128 of the Constitution, an interference with and undermining of the authority of courts of the law since the said land was subject of several court cases.

5. The respondent's actions are unreasonable and a brazen, well-rehearsed and targeted improper exercise of statutory power and an outright abuse of office;
6. That impugned actions of the respondent unless set aside have the effect of illegally depriving the applicant of over 20 acres of land now in the prime area of Kira-Namugongo without affording him a hearing and at the instance of a fictitious person-Tugume Winnie.
7. The applicant's owner's copy of certificate of title has ever been called for cancellation.
8. That prior to the impugned administrative action being challenged in September 2018, the applicant received a letter from the 1st respondent summoning him to appear before her and surrender the land titles.
9. The applicants' lawyers of Kampala Associated Advocates responded to the summons and explained that the summons were illegal, ultra vires, unjustifiable, unconscionable and an abuse of statutory power.
10. The applicant attended in company of his lawyers of Kampala Associated Advocates except the 2nd applicant who is the 1st applicant's son never attended.
11. That no hearing was ever conducted and the applicant was dismissed with his lawyers and no minutes were ever taken. No reply has ever been to their letter of 17th September, 2018.

The respondent filed an affidavit in reply through a one Golooba Haruna-Senior Registrar of titles with the respondent and contended that;

1. The office of the Commissioner Land Registration is charged with a statutory duty of keeping the sanctity of the Land register pursuant of which it has special powers to cancel certificates of title which are issued illegally, irregularly or erroneously.

2. The due process of law was followed in the process that led to the amendment of the register to cancel the transfer of plot 385 into the names of Hezekiah Mukiibi, the sub-division of the same creating plots 8151, 8152, 8153 & 8154 into the names of Magala Jonathan(2nd applicant)
3. The respondent received a complaint from Winnie Tugume to the effect that in 1998 she bought the land comprised in Kyadondo Block 185 Plot 385 from Tefiro Doffee Kisosonkole, a son and Administrator of the Estate of the late Kupuliyano Lufo Bisase Kisosonkole.
4. That the said purchase by Winnie Tugume was done in presence of a one Nantongo Daisy(daughter to Tefiro), Ssegawa Ruthmans (son to tefiro) Lule Kamoga (Estates manager) and Hezekiah Mukiibi (family surveyor) the 1st applicant.
5. That upon purchase, Winnie Tugume was given all the documents including signed transfer forms by the four administrators' of the Estate of the Late Kupuliyano Bisase Kisosonkole.
6. That the applicant was assigned the duty of survey and processing the certificate of title for Winnie Tugume, however on demanding for the certificate of title, he claimed that the said land as then comprised in Kyadondo Block 185 Plot 385 is his having obtained the same from Jeremiah Munyigwa.
7. That upon the studying of the complaint by Tugume Winnie, it was established the suit land formerly comprised in Kyadondo Block 185 plot 385 together with Plot 386 were transferred in the names of Hezekiah Mukiibi by a transfer dated 3rd day of November 1981 signed by Jeremiah Munyigwa.
8. That upon transfer of the said land, the said Hezekiah Mukiibi sub-divided plots 8151, 8152, 8153,& 8154 under Instrument No. KLA

464365 of the 30th day of July 2010, whereupon plot 8152 was transferred to Magala Jonathan the 2nd applicant herein vide Instrument No. KLA 492737 of the 25th day of March 2011.

9. That summons under Section 165 of the registration of Titles Act dated 30th day of August 2018 were issued to Hezekiah Mukiibi, Magala Jonathan and Mercantile bank but were objected to by the lawyers of the 1st applicant.
10. That by another letter dated the 28th day of September 2018 the applicants were requested to avail the information requested from them by the office of the Commissioner Land Registration as per the summons dated the 30th August 2018 but no response was received.
11. That the office of the Commissioner Land Registration issued a Notice of intention to effect changes in the register dated the 14th day of December 2018 to Mukiibi Hezekiah, Magala Jonathan and Mercantile Bank wherein they were briefly notified of the complaint against them.
12. That the notice of intention to effect changes in the register was duly posted on the registered mail of the said Hezekiah Mukiibi, Magala Jonathan and Mercantile Bank on their registered mail address as per postage numbers M-UGKL1218161813, M-UGKL-1218161808 and M-UGKL-1218161810.
13. That in the said Notice of Intention to effect changes in the register all the parties were invited for a public hearing which was to be held on the 17th day of January 2019 at the office of the Commissioner for land Registration in respect of the complaint that had been lodged to it by Winnie Tugume.
14. That despite having been served and invited for a public hearing to raise their objection to the Notice, none of the parties invited attended the Public hearing nor submitted any response or reply.

15. That at the hearing the complainant Winnie Tugume adduced an agreement pursuant of which she purchased the said land from Tefiro Doffe Bisase Kisosonkole which was duly signed by the said Hezekiah Mukiibi.

ISSUES

The court admits the following as the relevant issues coming up for determination;

- 1. Whether the Respondent's cancellation of the Applicants' Certificates of title to all that land formerly known and described as Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154 (now plot 385) was tainted with illegality, irrationality and Procedural Impropriety?**
- 2. What remedies are available to the parties?**

The Applicant was represented by Musiime Jone and Ssemakula Moses, whilst Ssekiito Moses represented the Respondent.

The parties were directed to file written submissions and it appears only the applicant filed. The respondent appears not to have responded may be due to lockdown. This court would proceed to determine the matter based on the evidence available.

RESOLUTION OF ISSUES

- 1. Whether the Respondent's cancellation of the Applicants' Certificates of title to all that land formerly known and described as Kyadondo Block 185 Plot Numbers 8151, 8152, 8153 and 8154 (now plot 385) was tainted with illegality, irrationality and Procedural Impropriety?**

The Applicant submitted on the law governing Judicial Review and relied on the case of **CECIL DAVID EDWARD HUGH VS. THE ATTORNEY GENERAL MSC. 266/2013 (Pages 3-5)** in restating the following principles:

- a) Judicial review is not concerned with the decision itself per-se but the decision making process. It involves an assessment of the manner in which the decision was made;
- b) The remedy is discretionary in nature and it is granted on three 3 (Three) grounds: **Illegality, Irrationality and procedural impropriety**;
- c) Illegality occurs when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. The decision maker is required to properly understand the law regulating the decision-making power and he/she must apply it properly to the facts and the law before it, would have made such a decision.
- d) Procedural impropriety is when there is a failure to act fairly as by non-observance of the rules of Natural Justice or to act with procedural unfairness towards those affected by the decision in question. Failure to adhere to expressly laid down procedural rules in a statute establishing or empowering the decision maker is ipso facto irrefutable evidence of procedural impropriety.
- e) Irrationality is when the there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself properly to the facts and law before it would arrive at such a decision;
- f) The prerogative writ of certiorari issues to quash a decision which is ultra-vires or vitiated by an error apparent on the face of the record;

In **ANGELO MUWANGA v. THE COMMISSIONER FOR LAND REGISTRATION & TEMPORA BISASE MSC. 17/2013**, Justice Hon. Dr. Andrew Bashaija K held that an in application for Judicial Review, the affidavits filed by the parties constitute the record in regard to the decision complained of. **(see page 3)**

The Applicants contend and submit that the decisions of the Respondent to Issue a Notice of cancellation of their certificates of title to the suit land and subsequently the amendment of the register cancelling their titles and reinstating Kyadondo Block 185 Plot 385 in their stead and subsequently transferring the same to a one Edward Wasswa Drake are; Illegal, irrational and beset with glaring abuse of the rules of natural justice and overt procedural impropriety.

The decision did not comply with section 91 of the Land Act Cap 227 (as amended) under which the Respondent purported to have issued the notice and amended the Register.

In the Supreme Court case of **GEOFFREY GATETE & ANGELLA MARIA NAKINGONYA VS. WILLIAM KYOBE SCCA 7/2005**, the Supreme Court held that effective means **“having the desired effect; producing the intended result”** In the context of summons, Joseph Mulenga (JSC) stated at page 8:

“There can be no doubt that the desired and intended result of serving summons on the defendant in a civil suit is to make the defendant aware of the suit brought against him so that he has the opportunity to respond to it...” (Emphasis)

We submit that the above applies with equal force to the summons in section 91 (2) and 91 (8) of the Land Act. The Respondent must not engage in a charade abusing the provisions of section 202 of the Registration of Titles Act (RTA) Cap 230 when in fact what he is trying to achieve is that the affected Registered proprietor such as the Applicants never finds out that he intends to cancel their certificates of title until it is too late. The purpose should be to ensure that the Registered proprietor is made aware so that he attends at the hearing to give his side of the story.

In this case, the Respondent was engaged with the Applicants on the subject of the controversies over the suit land through their then lawyers of Kampala Associated Advocates i.e. the Applicants were, as it is their right, were represented and correspondence on the matters was addressed through their Advocates.

We refer to the uncontested paragraphs 9 -14 of the Mukiibi's affidavit in support, which is admitted in paragraphs 13-14 of Golooba Haruna's affidavit in reply. Indeed, the applicants and their lawyers physically appeared before Aisha Kabira, Senior Registrar of titles on 20th September 2018.

Rather than address the Notice dated the 14th December 2018 through their lawyers, the Respondent chose to post this notice to the Box number registered on the title in 1981. This box number is certainly in disuse as the 1st Applicant long ceased to rent or pay for it.

We contend that by course of dealing left no doubt that the proper address of service of the Applicants was the provided address of Kampala Associated Advocates. It was a fatal malafide for the Respondent to tactfully eliminate KAA from the chain of communication when in fact they were the ones handling the dispute. Indeed all prior and subsequent correspondences were addressed to the Applicants through KAA except the important Notice of the 14th December 2018.

Further, we contend that section 202 is couched in permissive rather than mandatory language. This means that the onus is on the Respondent to choose a mode of service that will be most effective in getting the desired notice to the attention of the registered proprietor.

Merely posting a Notice is not effective service. The provision provides only for effective sending, but not effective receiving. We contend that it is not sufficient that the Notice is properly sent, the service must be effective i.e. received. Indeed, failure or an ineffective service is anticipated in Section 202 (6) which provides as follows:

“ When a notice is sent by letter posted to any person at his or her address for service and the letter is returned by the post office, the registrar may if in the circumstances and having regard to the provisions of this Act the or she thinks fit—

(a) direct any further notice to be given;

(b) direct substituted service; or

(c) proceed without notice”

We contend that under section 91 (2) and 91 (8) the service must be effective and in this case, it was not.

Further, the conduct of the Respondent in this case was designedly malicious. While he did not address the impugned Notice of the 14th December 2018 to KAA, he addressed the Notice of March 5th 2019 informing the Applicants of the already concluded cancellation of their titles to KAA.

In the notice, the Commissioner wrote:

*“The office received a complaint from **Winnie Tugume to the effect that in 1998 she bought the above mentioned land from Doffe Bisase Kisosonkole then Administrator of the estate of the late Kupuliyano Luffo Bisase Kisosonkole. A one Hezekiah Mukiibi, who was one of the witnesses to this purchase was also assigned a duty of surveying...he claimed that the land in which he transferred into his name in 1981...**”* (emphasis)

The purported sale agreement is attached as “H” to Golooba Haruna’s affidavit. We invite Court to scrutinize this agreement together with attachment “A” i.e. the certificate of title to plot 8151 (formerly 385), to Mukiibi’s affidavit in support. It is patently clear that Mukiibi was registered as proprietor at 2:20 PM on **the 13th November 1981**. It is therefore illogical and impossible that 17 years later, in 1998 Kupuliyano Luffo Kisosonkole rather than Hezekiah Mukiibi the registered proprietor would sell the land to Tugume Winnie, moreover with the said Mukiibi as a witness to the same sale agreement.

Kyadondo Block 185 plot 385 was only 1.09 Hectares i.e. 2.693 Acres. It is therefore illogical and impossible that Kupuliyano Luffo Kisosonkole was selling 3.8 Acres of it (i.e. more land than in the title) to Tugume Winnie. Further that the said Mukiibi was allegedly required to survey 3.8 Acres off of a 2.693 Acre piece of land which he himself owned and was resident on and pass the same to Tugume Winnie.

The Respondent attached as “B” a coloured photocopy of the transfer instrument by which Mr. Hezekiah Mukiibi became registered as proprietor to Kyadondo Block 185 Plot 385. It is dated 3rd November 1981. Government revenue was paid on 12th November 1981. The instrument was registered under instrument No. KG. 100645 on the 13th November 1981.

How then can the same Respondent have summoned and cancelled the Applicants’ certificates of title on the ground that the same were wrongfully obtained on the basis of an alleged sale agreement of 1998, 17 (seventeen) years later?

We contend that it is illegal for the Commissioner to purport to cancel the Applicant's title without conducting a hearing. This is the equivalent of convicting a person in a criminal trial based on police statements alone without a trial at all.

We contend further that the Commissioner is not entitled to make a decision without independently considering the complaint and weighing the evidence placed before him even if the Registered proprietor does not attend the hearing.

By way of analogy, the Commissioner has no power of entering a "default judgment" in favour of the complaint. A complainant must be put to task to prove their complaint even in the event that the Registered proprietor does not appear to defend himself. Even Courts of law set down the suit for formal proof even if the defendant does not enter appearance. We contend that the same is required of the Commissioner and having failed to do this, his actions are illegal and ultra-vires.

THE COMMISSIONER HAS NO POWER TO CANCEL A TITLE FOR FRAUD

The totality of the communication of the Registrar leaves no doubt that he purported to cancel the Applicant's titles was that the 1st Applicant allegedly obtained Kyadondo Block 185 Plot 385 in 1981 by fraud.

If it was the case that the 1st Applicant obtained the certificate illegally, then the Respondent should have cited the law in contravention of which the 1st Applicant obtained the title. The circumstances enumerated in John Karuhanga's order of 30th January 2019, even if assumed to be true, speak of fraud.

In the recent unanimous decision of the Supreme Court of Uganda of **HILDA WILSON NAMUSOKE & OTHERS VS. OWALLA'S HOME INVESTMENT TRUST LTD & THE COMMISSIONER FOR LAND REGISTRATION SCCA 15/2017**, the Court was unequivocal in holding that the Commissioner for Land Registration has **NO** power under section 91 of the Land Act to cancel a Certificate of Title to fraud. At page 11 of the lead Judgement of Professor Lillian Tibatemwa Ekirikubinza, the Court stated:

"I am inclined to believe that the absence of fraud in the new provision was deliberate. It therefore follows that the enactors of the Land Amendment Act of 2004 took away the authority of the Commissioner to

cancel a certificate of title on the basis of fraud without referring the matter to Court. The Commissioner's action is rightly limited to actions or 'errors' or 'illegalities' that do not require the rigours of a full trial where fraud would be established before a title is impeached. The commissioner who may exercise quasi-judicial powers would have no capacity to hear a matter involving fraud and make findings involving calling evidence including cross examination of witnesses alleging fraud" (emphasis)

For purporting to exercise a power he does not have in this case, we contend that the Respondent committed an illegality that vitiated his decision/action.

THE NOTICE AND CANCELLATION WAS ILLEGAL FOR BEING SUB-JUDICE

In ANGELO MUWANGA VS. COMMISSIONER FOR LAND REGISTRATION (supra), a case curiously involving the Respondent here and the now troublesome estate of the late Kupuliyano Luffo Kisosonkole, Justice Dr. Justice Bashaija Andrew K cited his earlies decision in Mucunguzi Myers vs. Sarah Kulata Basangwa, the Commissioner for Land Registration thus:

"...the respondent (commissioner for land Registration having been put on notice that the matter was pending determination in Court, the respondent ought to have exercised diligence and caution by refraining from dealing with the register in any way whatsoever. The so called action of amending the register not only violated the principles that underpin the sub-judice rule, but was wantonly contemptuous of the due Court process and hence the respondent acted contrary to law...in taking these actions the Respondent assumed the powers of Court which are ordinarily not vested in her domain"

KAA'S letter of 17th September 2018 referenced KAA/954/2018/1/DM brought it to the abundant attention that the suit land was the subject of the several listed cases before several divisions of the High court of Uganda. **(See para 22 of the same affidavit)**

The allegations and documentation of Tugume Winnie that the Respondent purported to act on are the crux of Criminal case No. 409/2018 at the Chief Magistrates Court of Kira. The same is currently the subject of Criminal Revision Application Nos. 2, 3 and 4 of 2019 pending before Lady Justice Jane Frances Abodo.

It was therefore disingenuous for the Commissioner Land Registration to feign ignorance of these matters in its Notices of 14/01/2019, 5/3/2019 and John Karuhanga's amendment order of 30th January 2019. All these matters were in the Commissioner's full knowledge and must have been bound up in the files of the suit land (**See section 196 RTA Cap 230**)

In our view, the Commissioner was duty bound to await Court's pronouncement on Tugume Winnie's allegations and the documents she provided before taking any of the actions he so hurriedly took. There would be a complete embarrassment as and very likely so, the Court held that the allegations of Tugume Winnie are wildly false.

We contend that the Commissioner was not only in sub-judice but also in wanton contempt of Court as KAA had abundantly brought these matters to his attention.

Determination

The applicants' counsel contends that the service of summons was not effective and he cites a decision of the Supreme Court **Geoffrey Gatete & Angella Maria Nakingonya v William Kyobe SCCA 7/2005** to support his submissions.

We should appreciate that decisions of the courts of law on procedural law should not be applied or ought to be applied with a lot of caution lest the proceedings of the administrative bodies are turned into courts. The decision cited by learned counsel is not applicable to the proceedings before the Commissioner Land Registration.

The applicant does not state in his affidavit that the said address had since changed. There was no notification of change of address to that of the advocate. At least even the letter written by the said lawyers does not intimate that the address of service of any further correspondences should be through them. It could be very true that the said law firm was only instructed to respond to the summons of 30th August 2018 and the instructions ended on that day.

It bears emphasis, that the summons of 30th August 2018 to the applicant had been addressed to their addresses on the certificate of title. They do not dispute ever receiving the same and atleast they responded through their lawyers- Kampala Associated Advocates.

It is the applicant's counsel who has decided to submit from the bar that ' *the box number registered in 1981 is certainly in disuse as the applicant has ceased to rent or pay for it*'. The applicants did not state that in their affidavit evidence and it would appear they were comfortable with said address. In absence of any evidence to the contrary the Commissioner Land Registration should not be faulted for sending the "Notice of Intention to Effect Changes in the Register" on registered address on the certificate of title.

It is a duty of every person whose interest is registered in any land with the Land Office, to ensure that the address availed is forever active for purposes of receiving communications from the Commissioner Land Registration. This court does not want to create an extra burden on that office except for such persons who have not provided any address for purposes of sending correspondences or whose mails have been returned by post.

The applicant's counsel also contended that the service was not effective by stating that effective sending is not the same as effective receiving. The law cited by counsel Section 202 of the Registration of the Titles Act provides for alternatives if the first sent mail is returned. If the registered mail is not returned the service is deemed effective.

Section 35 of the Interpretation Act provides that;

Where any Act authorises or requires any document to be served by post, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

The submission of counsel on effective receiving fails and is unsustainable. The respondent should not be burdened with establishing whether the letter has effectively been received unless it is returned by post.

This court is satisfied that the applicants were duly served with the Notice of Intention to Effect Changes in the Register.

Secondly, the applicants counsel is challenging the decision of respondent to issue the notice of Intention to Effect Changes in the Register to be irrational or illogical since the acreage was different and that the same had been sold in 1981.

The transaction of 1981 raises a lot of unanswered questions and unreasonableness could be imputed on both sides due to the nature of the transaction. The 1st applicant does not deny being the family surveyor of Kupuliyano Lufo Bisase Kisosonkole who was responsible to transfer the land in issue in 1998 when the said Tugume Winnie purchased the same.

The applicant does seem to be denying existence of Tugume Winnie and contending that she is a 'fictitious person'. The applicant did not join the so called fictitious person for purposes of at least driving his point home or prove to court that the title was cancelled and registered in the names of the fictitious person.

An agreement has been drawn to the attention of this court where the so called fictitious person in 1998 signed an agreement allegedly in presence of the 1st applicant, Nantogo Daisy (daughter to Tefiro) Ssegawa Ruthmans (Son to Tefiro) Lule Kamoga (Estates manager). The applicant never responded to the said affidavit evidence either by way of a supplementary affidavit or an affidavit in rejoinder.

The applicant was expected to make his case before the Commissioner Land registration by way of a statutory declaration in the summons of 30th August 2018. To explain how the said land was acquired by himself, but there is no such evidence but rather there is a technical response by his counsel not alluding to any of the queries raised by the Commissioner Land Registration.

The Commissioner Land Registration was justified to issue the Notice to the applicant in order to exercise the mandate under the Registration of Titles Act and Land Act.

Thirdly, the applicants' counsel submitted that no hearing was conducted since they did not appear and he alluded to court proceedings as the only mode of hearing.

There is no fixed form of hearing procedure which is to be followed in various cases. It varies from situation to situation. It is ultimately for the court to decide whether the hearing procedure adopted in a specific case accords with natural justice or not. Oral or personal hearing is regarded as an inevitable or indispensable ingredient of natural justice in all cases. It is not regarded essential that in every case there should be an oral or personal hearing. Natural justice does not necessarily predicate a personal hearing unless the context requires otherwise.

The respondent in their affidavit stated that at the hearing none of the parties invited appeared for public hearing. *The complainant Winnie Tugume adduced an agreement pursuant of which she purchased the said land from Tefiro Doffe Bisase Kisosonkole which was duly signed by the said Hezekiah Mukiibi. That a police laboratory report was adduced by the said Winnie Tugume confrming that the signature on the sale agreement is that of Mukiibi Hezekiah and that he cannot come up to allege that he was not aware of her purchase"*

It is clear there was a hearing although it was ex parte and the said Tugume Winnie proved her case before the Commissioner Land Registration. In absence of any evidence to the contrary, this court cannot fault the nature of proceedings.

Fourthly, the applicant's counsel contended that the Commissioner Land registration has no power to cancel a title for fraud. The counsel cited the case of Supreme Court of Uganda of **Hilda Wilson Namusoke & Others v Owalla's Home Investment Trust Ltd & the Commissioner for Land Registration SCCA 15/2017**.

This court agrees with this submission of counsel on this point to the extent that the commissioner cannot cancel a land title for fraud and has reiterated the same in the case of *Francis Louis Kibuuka & Another v Commissioner Land Registration & Kigongo Justine High Court Miscellaneous Cause No. 60 of 2019*.

In the present case fraud has not been alluded to by the decision maker/Commissioner land registration as the basis for the cancellation. Neither has the 1st applicant testified or stated that he got registered fraudulently on the certificate of title.

The Commissioner in his decision stated that Mukiibi erroneously and with no claim of right transferred the above land into his names. The respondent tried to exercise the powers premised on errors. Whether it is true or not it should be a question of fact whether this was error or a fraud. In absence of any specific particulars' fraud this court cannot make any finding to that effect. That would be going into the merits of the case which is least appropriate in judicial review matters.

Fifthly, the applicants' counsel argued that the actions of the respondent were *sub-judice*, therefore the commissioner was wrong to entertain the complaint

of Tugume Winnie and take a decision pending 8 criminal cases and 3 civil cases.

Sub-judice rule is not one of the grounds for judicial review. The decision maker cannot be restrained merely because there are pending matters in court. If a party is likely to be prejudiced by the decision of Commissioner land registration, it would be prudent to seek a temporary injunction.

Otherwise, the office the Commissioner Land Registration would not execute their functions mandated under the Land Act or the Registration of Titles Act. All fraudsters would file any hopeless case and plead *sub-judice* in order to maintain the status quo or curtail the powers of Commissioner Land Registration.

I thus resolve this issue in the negative.

This application is dismissed with costs.

I so order.

*Dated, signed and delivered be email and whatsApp at Kampala this
22nd day of May 2020*

*Ssekaana Musa
Judge*