

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISC CAUSE NO. 232 OF 2019
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
AND
IN THE MATTER OF ENFORCEMENT OF HUMAN RIGHTS ACT, 2019
HON. HENRY MUGANWA KAJURAAPPLICANT
VERSUS
1. COMMISSIONER LAND REGISTRATION
2. ATTORNEY GENERALRESPONDENT

BEFORE: THE HON. JUSTICE ESTA NAMBAYO

RULING

Hon. Henry Muganwa Kajura (hereinafter referred to as the applicant) brought this application under **Articles 50, 28, 44, 45, 240 & 241 of the Constitution and S. 36 of the Judicature Act, Rules 5,6 and 7 of the Judicature (Judicial Review) Rules, 2009 and S. 4 of the Human Rights Enforcement Act, 2009** against the Commissioner Land Registration (hereinafter referred to as the 1st respondent) together with the Attorney General (hereinafter referred to as the 2nd respondent) seeking for:

- 1. A declaration that the orders of the 1st respondent as constituted in an amendment of register letter dated 17th June, 2019 was illegal and unlawful and was calculated to expropriate the applicant's land without due compensation**
- 2. A declaration that the 1st respondent did not have the legal mandate to make orders that the applicant had illegally/ wrongfully acquired the suit land comprised in LRV HQT 39 Folio1**
- 3. A declaration that the 1st respondent could not constitute itself in a quasi-judicial organ to cancel title issued under article 240 of the Constitution and in contravention of article 241 of the Constitution**
- 4. An order of Certiorari quashing the 1st respondent's orders**
- 5. An order of prohibition and injunction prohibiting the 1st respondent from issuing any such orders in respect of the matter complained of.**
- 6. An injunction restraining the respondents from harassing, intimidating and arresting the agents, servants and employees of the applicant**
- 7. Costs of the application**
- 8. Any other relief deemed fit by this Honorable Court.**

The grounds of this application are well laid out in the applicant's affidavit but briefly are that:

1. The applicant is the registered proprietor of land comprised in **plot 85 LRV 1675 Folio 24 Bhanzi Kyangwali Hoima District** and is in possession of a certificate issued by Hoima District Land Board, the granting authority under article 240 of the constitution.
2. The applicant's title was cancelled in contravention of article 26 of the Constitution and without due compensation for the said land
3. In contravention of the relevant laws the 1st respondent adjudicated upon a matter in which they did not have jurisdiction and issued orders cancelling the applicant's title on grounds that the said land was wrongfully/illegally acquired and belongs to communal ownership and thus interfered with the mandate of the District Land Board as provided under article 240 and 241 of the Constitution
4. The applicant was not afforded an opportunity to be heard as required by article 28 and Art. 44 of the Constitution
5. There was overwhelming evidence that the land was lawfully acquired through the District Land Board and never belonged to a communal entity
6. There is no dispute over the land which the applicant owns and the 1st respondent had no basis whatsoever to cancel the applicant's land title
7. The law itself does not empower the 1st respondent to cancel titles on grounds that they belong to another individual, communal or another entity and more so issued by the District Land Board

8. The applicant was never served with any application to cancel his title or any other subsequent hearing notice
9. The applicant only discovered that the 1st respondent has issued an amendment of the register dated 17th June, 2019 without being duly informed
10. In contravention of the principles of natural justice and or the law, the applicant was not granted a fair hearing
11. It is just and equitable that the said amendment of the register be set aside.

Both respondents filed their affidavits in reply opposing the application. For the 1st respondent it was contended by Bigiira Johnson a Senior Registrar of titles that the applicant's affidavit in support of the application contains falsehoods. Mr. Bigiira further states that the 1st respondent in conjunction with the Ministry of Energy and Mineral Development conducted investigations into the Land titles issued in Kingfisher Development Area in Buhuka Parish, Kyangwali sub County, Hoima District and the investigations revealed that a number of titles including the certificate of title comprised in **Leasehold Register Vol HQT39 Folio1** expired and upon extension it came to be described as **leasehold register Volume HQT675 Folio 24** and was issued to Henry Muganwa Kajura illegally. The land was acquired through various grants from Hoima District Land Board. Since the land is owned communally under customary Law it was not available for a grant to any other person. Basing on the above finding the 1st respondent issued a notice

of intention to effect changes in the register to the applicant using the address provided by the applicant. The 1st respondent therefore took it that the applicant was effectively served for the hearing. The applicant never turned up for the public hearing after being served, neither did he give any explanation for his none attendance. The 1st respondent then went ahead to effect changes on the register by cancelling the title registered in the names of the applicant. It is the 1st respondent's contention that the applicant cannot claim not to have been given an opportunity to be heard in the circumstances because he was served at the address that he himself provided to the 1st respondent.

For the 2nd respondent, Ms. Charity Nabasa, a state Attorney in the Attorney General's Chambers contends that the application discloses no cause of action against the 2nd respondent.

In his rejoinder the applicant contends that the land inspection report indicated that the land in issue did not belong to any person or authority and the District Land Board allotted it to the applicant. The applicant has never received any complaint from any person that the land was erroneously allocated to the applicant. The applicant is not aware of any community holding of the land under customary law.

When the matter came up for hearing, Learned Counsel Mugenyi Yesse appeared for the applicant. Mr. Moses Sekito together with Babu Hakim appeared for the 1st respondent while Moses Mugisha holding brief for Richard Adrole, Principal State Attorney from the Attorney General's

Chambers appeared for the 2nd respondent. Counsel for the applicant and Counsel for the 2nd respondent filed their written submissions. Counsel for the 1st respondent did not file their written submissions but only wrote a letter addressed to the Registrar of this Court. I will address my mind to this letter at the appropriate time.

Counsel did not lay out the issues for trial before Court. However, from the evidence presented and the submissions of Counsel, I find it necessary to first establish whether this application is properly before this Court before I address my mind to the remedies available to the parties. The submissions filed by Counsel for the applicant and Counsel for 2nd respondent have only addressed the issue of remedies. Therefore, I will set out the issues as follows:

1. Whether this application is properly before this Court for judicial review

2. What remedies are available to the parties

Issue 1: Whether this application is properly before this Court for judicial review

Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019 defines Judicial Review as the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi – judicial functions or who are charged with the performance of public acts and duties.

The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected to. (see the case of **Chief Constable of North Wales –v- Evans [1982]3ALLER) 141**

In *Pastoli Vs Kabale District Local Government Council and Others [2008] 2 EA 300* it was held while citing the *Council of Civil Unions Vs Minister for the Civil Service [1985] AC 2* and *an Application by Bukoba Gymkhana Club [1963] EA 478 at 479* that:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety ...

“Illegality is when the decision -making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality.”

“Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards

“Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a

decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

Under Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019, the Court in considering an application for judicial review must satisfy itself that:

- 1(a) the application is amenable for judicial review,
- (b) the aggrieved person has exhausted the existing remedies available within the public body or under the law and;
- (c) the matter involves an administrative public body or official among others.

A public body within the meaning of Rule 2 (a) of the Judicature (Judicial Review) (Amendment) Rules, 2019 includes the Government, any Department, Services or under taking of the Government.

In this case the respondent is responsible for the services of Government under Art. 189 and the 6th schedule of the Constitution of the Republic of Uganda which qualifies it to be a public body and therefore, its decisions are subject to Judicial Review.

It is the contention of the applicant that the respondent cancelled his name from the register of titles without giving him an opportunity to be heard which contravenes the rules of natural justice.

S.91 of the Land Act provides that:

(1) Subject to the Registration of Titles Act, the commissioner shall, without referring a matter to a court or a District Land Tribunal, have power to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise.

(2) The Commissioner shall, where a certificate of title or instrument—

(e) is illegally or wrongfully obtained; or

(f) is illegally or wrongfully retained;

give not less than twenty-one days' notice, of the intention to take the appropriate action, in the prescribed form to any party likely to be affected by any decision made under this section.

In this case, the applicant states in paragraph 11 of his affidavit in support of the application that in July, 2019, the 1st respondent cancelled his title from the register without giving him an opportunity to be heard or serving him with any notice of intention to cancel his title or to amend the register (see annexure " V") to the affidavit in support of the application.

In paragraph 12, the applicant further states that the letter dated 17th June, 2019 was made in total contravention of the constitution of Uganda as his right to own property enshrined in Article 26 of the constitution was violated.

In paragraph 8 of the affidavit in reply, the 1st respondent states that the applicant was served with the notice of intention to effect changes in the register by registered mail of **P.O Box 20 Hoima** under the postage receipt No. M- UGKL0717063455 dated 20th July, 2017 (annexure "B") to the affidavit in reply. That the applicant did not turn up following the notification which prompted the Commissioner to effect changes on the register as per the amendment order which is annexure "C" to the affidavit in reply.

Under paragraph 11 of the affidavit in reply, it is stated for the respondent that the applicant was served by registered mail through the postal address that he provided by himself to the respondent and he cannot therefore say that he was not accorded a right to be heard.

I have looked at the notice of intention to effect changes in the register which is annexure "A" to the affidavit in reply. This notice is addressed to: **Muganwa Henry Kajura**

P.O Box 143 NEBBI (emphasis is mine).

The postage receipt (annexure "B") to the affidavit in reply indicates the destination as **Nebbi**, the addressee is **Muganwa Henry Kajura**. The information given by the respondent in paragraph 8 of the affidavit in

reply as the address of the applicant is Muganwa Henry Kajura of **P.O Box 20 Hoima**. This address contradicts the particulars of the postal details in annexure "A" and annexure "B" to the affidavit in reply. On the 9th December, 2018 Mr. Ssekito Moses, Counsel for the 1st respondent wrote a letter addressed to the Deputy Registrar of this Court in respect of this case. In paragraph two and three of the letter Counsel Ssekito states that:

"Perusal of the Land register reveals that the notice of intention to effect changes in the register was posted on a wrong address and thus the applicant herein was never accorded the right to be heard.

The purpose hereof is to formally concede to the application in terms that the applicant's certificate of title is reinstated with no orders as to costs and damages"

In view of the evidence presented as shown above and the communication by Counsel for the respondent in his letter to the Deputy Registrar of this court dated 9th December, 2019, clarifying that the notice of intention to effect changes in the register was posted on a wrong address, it is my finding that the applicant was not given notice as required under S. 91(2) of the Land Act. This would therefore mean that the 1st respondent effected changes on the register without giving the applicant an opportunity to be heard.

What stands out to be answered now is whether the applicant being aggrieved by the action of the respondent exhausted the existing

remedies available under the law as required under rule 7A (1) b of the Judicature (Judicial Review) (Amendment) Rules, 2019.

Rule 7A (1) b of the Judicature (Judicial Review) (Amendment) Rules, provides that the Court in considering an application for judicial review must satisfy itself that the aggrieved person has exhausted the existing remedies available within the public body or under the law.

Under paragraph 11 of the affidavit in support of the application it is stated that:

“in July, 2019, the applicant learnt that the 1st respondent without affording him an opportunity to be heard or serving him with any application to amend the register has cancelled his title see annexure “V”

S. 91 (10) of the Land Act as amended provides that any party aggrieved by a decision or action of the commissioner under this section may appeal to the District Land Tribunal within sixty days after the decision was communicated to that party.

Justice Mulangira in **C.R. Patel –v- The Commissioner Land Registration & 2 others CS NO. 87 Of 2009** observed that:

“where the Commissioner Land Registration cancels a certificate of title or an endorsement thereon or an instrument under Section 91

of the Land Act, the aggrieved party has a right to file an appeal under Section 91 (10) of the land Act. The appeal cannot proceed without joining and hearing all persons who could be affected by the decision of the Court, on appeal. They have to be parties and once they are heard, the Court can cancel the orders of the Commissioner Land registration if found illegal or wanting.”

In this case the applicant should have appealed to the High Court so that the matter is properly heard before any orders are made. All interested parties who may be affected by the decision of Court need to be heard before Court pronounces any orders on the changes in title. This cannot be done by way of affidavits in Judicial review as it may require detailed evidence, cross examination and visiting locus. Therefore, it is my finding that this application should not have been filed for Judicial review before exhausting the remedies provided under the law.

In the circumstances, I find that this application is not properly before this Court for judicial review and it is hereby dismissed.

Costs

Counsel for the respondent in the letter dated 9th December, 2018 addressed to this Court conceded to the application and prayed that no orders be made as to costs and damages.

In the case of **Butagira Vs Deborah Namukasa (1992-1993) H.C.B 98 at 101**, it was held that:

“The general rule is that costs shall follow the event and a successful party should not be deprived of them except for good cause. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation but matters which led up to the litigation.”

The respondent having realized that they made an error, they should have rectified the error instead of letting the applicant run to court. In the alternative they should have opted to have this matter settled out of court with the applicant. It is not enough for the respondent to say that we concede to the application. Let each party bare its own costs when the applicant has suffered costs and inconvenience due to their negligence. The respondent should meet all the costs that the applicant incurred in pursuing this matter in court.

I so order

Dated, signed and delivered by email at Kampala this 11th day of June, 2020.

Esta Nambayo

JUDGE

11th June, 2020

