

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MC. NO. 32 OF 2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

DAVID SEGULANI.....APPLICANT

V

- 1. ATTORNEY GENERAL**
- 2. COMMISSION OF INQUIRY IN THE EFFECTIVENESS OF LAW, POLICIES AND PROCESS OF LAND ACQUISITION, LAND MANAGEMENT AND LAND REGISTRATION.....RESPONDENTS**

BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

RULING

A. Introduction

1. On February 14, 2019 ,the Applicant Segulani moved court under Articles 42 and 44 of the Constitution, Section 36 of the Judicature Act and the Judicial Review Rules 2009 for prerogative orders as follows:
 - a. Certiorari quashing the decision /injunction of the Commission of Inquiry contained in a letter Ref/Wakiso /23/2017 and Wakiso 24/2017 dated January 28, 2019 addressed to the Resident District Commissioner and District Police Commander Wakiso , and the Applicant that concerned Mengo Block 358 plots 22 and 23 and Block 358 plot 14 Busiro .
 - b. Prohibition prohibiting the RDC and DPC from implementing the decision of the 2nd Respondent concerning the said land;
 - c. A permanent injunction restraining the 2nd Respondent from investigating or interfering in the judicial process in respect of the said land vide HCC No. 774 of 2016 pending in court;
 - d. A declaration that the decision of the 2nd Respondent is ipso facto null and void ab initio.
 - e. General, aggravated and punitive damages.

2. The Applicant relied on affidavits in support and in rejoinder while the Respondents relied upon affidavit in reply of Dr. Douglas Singiza. On April 1, 2019, counsel were given a schedule to file written submissions which I have carefully considered along with the authorities availed.

B. Issues for trial

Both counsel addressed the following issues:

1. Whether this is a proper case for judicial review
2. Whether the Applicant is entitled to remedies.

C. Background facts.

3. By Legal Notice 2 of 2017 dated February 3, 2017, the 2nd Respondent (hereinafter referred to as the Commission) was established by His Excellency the President under the Commission of Inquiry Act Cap. 166 to inquire into the effectiveness of law, policies and process of land acquisition, land management and land registration and make recommendations. The terms of reference relevant to this dispute are :
 - a. *To investigate and inquire into the law, processes and procedures by which land is administered and registered in Uganda;*
 - b. *To identify , investigate and inquire into the effectiveness of the dispute resolution mechanism available to persons involved in land disputes;*
 - c. *To inquire into any other matter connected with or incidental to the matters aforesaid and make recommendations for improving the efficiency and effectiveness of the law, policies, and processes of land acquisition, land administration, land management and land registration in Uganda.*

D. The evidence

4. On June 1, 2017, Faith Namyanya and Laban Katamba lodged a complaint with the Commission whereupon Dr. Singiza by letter dated January 21, 2019 invited the Applicant to give a witness statement in response to a complaint from what the Commission Secretary referred to as 'registered proprietors' of Busiro Block 358 Plot 14 regarding the acquisition of Plots 22 and 23 on the said land by the Applicant.

5. By a letter dated January 29, 2019, the secretary to the Commission, Dr. Singiza wrote to the Resident District Commissioner and District Police Commander Wakiso in the following terms:

Halting and desisting transactions on disputed land comprised in Mengo Block 358 plots 22 and 23 Block 358 plots 14, Busiro, Nsangi, Wakiso.

...

In accordance with Section 9 of the (Commission of Inquiry) Act, the Commission is investigating ownership of land comprised in parcels originating from Block 358 plots 22 and 23 with David Segulani as the main proprietor who had a dispute with the beneficiaries of the estate of the late Ibrahim Mayanja, who claim the land overlaps with land comprised in Mengo Block 358 plot 14 Busiro, Nsangi Wakiso.

*The purpose of this letter is to direct your office to ensure that David Segulani and others together with their agents to cease and desist from **any activities and dealings** on the disputed land with immediate effect as the Commission investigates to bring this matter to its logical conclusions and the Commission's directive and court consent orders are hence forth complied with and the status quo maintained.*

Please note it's an offence to disobey the Commission's directives for which criminal charges may be preferred.'

6. It is a fact that the registration process and ownership under investigation by the Commission is the subject matter in dispute in **HCCS NO. 774 of 2016 wherein Namyanya Faith and Katamba Laban** are two of four plaintiffs while **Segulani David** is one of 43 defendants. This Amended Plaint attached to the motion was filed on November 23, 2016 while the Written Statement of Defence was filed on December 20, 2016. The dispute between them is Block 358 plot 14 Busiro which the plaintiffs claim as beneficiaries of the estate of Ibrahim Mayanja and whose evidence of ownership is the blue page. The defendant Segulani is described in the plaint as registered proprietors of Block 358 and 112 plots.
7. Regarding Block Mengo 358 plots 22 and 23 and Block 358 plot 14 Busiro, Wakiso, the plaintiffs claim for cancellation of all titles that were created from Block 14 (plots 22 and 23) and that they are the lawful beneficiaries.
8. The total effect of this analysis is that the registration process and ownership under investigation by the Commission is the same subject matter under adjudication by the High Court in HCCS NO. 774 of 2016.

E. Whether this is a proper case for judicial review

- 10 Both counsel have provided a wealth of authorities on the purpose of judicial review procedure and the principles that guide courts when determining whether a public body acted within the law. Article 42 of the constitution confers on every person a right to fair and just treatment by administrative bodies and the right to seek court redress where that right is violated.
- 11 Secondly, it is now trite law that where a public body acts illegally or with procedural impropriety in its decision making process or where the decision is irrational, an aggrieved party may bring an action in judicial review. **HCMC No. 106 of 2010 Kuluo and others v Attorney General and others** is relevant in this regard.

12 I found some quotes in Halsbury's Laws of England (Source: LexisNexis online library) useful.

'A body might be amenable to judicial review by reason either of the source from which it derives its power or because it discharges public duties or performs public functions. The crucial consideration is whether there is a public law element to a public decision.'

'Judicial review is designed to prevent the excess and abuse of power by public authorities. In most cases, the powers of public authorities are conferred by statute. It is therefore with statutory power judicial review is primarily concerned with'.

13 A close examination of submissions of both counsel shows that they in fact argued their substantive cases of whether or not the Applicant is entitled to the remedies, having both agreed in principle that this is a proper case for judicial review principally because the Commission is an administrative body performing public functions and therefore its decisions/directives can be the subject of judicial review.

Fair hearing

14 Counsel for the Applicant submitted that the Applicant was given an injunction without a hearing by the Commission. This submission is misplaced because counsel contradicts affidavit evidence of his client that showed the Applicant was invited by the Commission, he interacted with them and he informed them of the pending land dispute in court. (Para. 5 to 8 of affidavit in support).

15 Fair hearing is observed when an administrative body gives an opportunity to the Respondent to present their case whether in writing or orally. In this case the Applicant was heard orally and his lawyers (Mugisha & Co. Advocates) made a written representation by letter dated January 30, 2019 in which they give legal arguments in support of the Applicant. I therefore find that the Applicant was given a hearing under special circumstances where the Commission was carrying out an investigative function.

Illegality

16 Counsel submitted that the Commission acted illegally when it issued orders contrary to court decisions. The decisions under reference by counsel are **HCCS No. 1 of 2011, HCCS No. 43 of 2013, MA NO. 43 of 2013, MA No. 979 of 2018; MA NO. 1521 of 2018, HCCS NO. 774 of 2018.**

17 As pointed out by counsel for the Respondent, most of these decisions were not availed and I only saw two decisions attached to the affidavit in support. These are **MA 460 of 2015 arising from Civil Suit No. 107 of 2011.** This decision between Katamba Laban and others v Segulani and others dismissed **Civil Suit No. 107 of 2011** because the plaintiffs did not have locus standi to sue as they did not possess letters of administration.

18 The second decision is in **MA 613 of 2015 arising from CS NO. 43 of 2013** between the same parties in which the trial judge dismissed the application by Katamba and others for a temporary injunction against Segulani and others. There is no evidence the Commission specifically contradicted the order in MA 613 of 2015 since it's directive was directed to the RDC and DPC.

Investigative mandate of the Commission

19 The only argument of substance under this sub heading was in fact advanced by counsel for the Respondent who submitted that the impugned letter dated January 28, 2019 by the Commission was not a decision as a final decision has not been rendered by the Commission in the matter. Moreover, according to counsel, Commissions of Inquiry in Uganda do not conduct their business as tribunals and that they merely make recommendations. Counsel cited **Sebutinde v AG Const. Ref. No. 5 of 2005** in this regard. Counsel for the Respondent contended that the logic behind the directive to the RDC and DPC was for them to take steps to

maintain the status quo and prevent interference that would otherwise prejudice investigations.

20 On the other hand, in their rejoinder, counsel for the Applicant submitted that the letter to the RDC and DPC is an injunction and therefore a decision amenable to judicial review.

21 I agree with submissions of counsel for the Respondent that in inviting the Applicant to make a statement, the Commission was carrying out its mandate under Legal Notice NO. 2 of 2017 to investigate and inquire into land acquisition processes and adjudication and make recommendations. Counsel cited **Kulata v AG Supreme Court Criminal Appeal No. 3 of 2018** where the appellant challenged her prosecution by the IGG and the Supreme Court held that commencement of criminal proceedings did not amount to interference with a pending civil case. Counsel further submitted that the IGG was restricted from investigating court matters but that the other bodies like the DPP and the Commissions of Inquiry are not. While I agree with counsel for the Respondent that the Commission had power to investigate the complaint by Katamba and another, that power stopped at making recommendations to the appointing authority.

22 The administrative directive issued by the Commission had the effect of restraining the Applicant from dealing with the land, moreover, if it was not enforced by the RDC and DPC, these two officers were reminded of sanctions for non-compliance in these terms:

'Please note it's an offence to disobey the Commission's directives for which criminal charges may be preferred.'

23 Without a doubt, the administrative directive was not just idle talk, it had to be enforced by the RDC and DPC who had to take charge of the land especially as activities on the land had to cease. The issue here is whether the Commission was empowered to give

such directives that were re-enforced with sanctions in the event of non-compliance by the concerned officials.

24 As rightly submitted by both counsel, the powers of the Commission are to be found in the **Commission of Inquiry Act Cap. 166 and Legal Notice No. 2 of 2017**. Under Section 6 of the Act, the Commissioners are

Required to make a full, faithful and impartial inquiry into the subject matter specified in the Commission, conduct the inquiry in accordance with the direction, if any in the Commission; in due course report to the Minister, furnish a full statement of the proceedings, and the reasons leading to conclusions arrived at or reported. ‘

25 Under Section 9 of the Act, the Commissioners have power to summon and examine witnesses and call for production of documents and an inquiry is deemed to be a judicial proceeding for the purpose of Section 94 and 99 of the Penal code Act. (Section 94 creates the offence of perjury while Section 97 creates the offence of fabrication of evidence).

26 In other words, the Commission is authorised by Section 9 to cause the prosecution of any witness who gives false information or who fabricates evidence. Therefore, the threat to prosecute the RDC and DPC for non-compliance with the Commission directive is without legal basis because it can only cause prosecution of witnesses for offences under Section 94 and 97 and no other person.

27 In carrying out investigations, just like the IGG and Uganda Police, there might be need to preserve evidence. Under Section 29 of the Police Act cap. 303, a police officer has power to seize and retain moveable property because it is impossible to seize real property. Nowhere in the Police Act is a police officer authorised to take charge of land in a bid to preserve evidence.

28 Likewise, the Commission in its investigative role does not have power to order the police to take charge of land for the purpose of, in the words of the Commission, *'as it investigates to bring the matter to its logical conclusion'*.

29 As held in **Dott Services v Attorney General HCMC NO. 137 of 2016**, the Commission' special investigative powers must be exercised within the law and in this context, I mean that interim injunctive and preservation orders or directives ought to be left to the court seized of the dispute and that has the constitutional authority under Section 126 to exercise judicial power while adjudicating disputes.

30 The Commission was aware of the pending dispute between the complainant Katamba and Namyanya, and Segulani vide **HCCS No. 774 of 2016** in the Land Division of the High Court. Because the subject matter the Commission was investigating was also under adjudication by a competent court, the directive issued by the Commission to the RDC and DPC to preserve the status quo is ultra vires its powers as a purely investigative body whose mandate was to investigate adjudicative processes and make recommendations for reform.

31 The impugned letter also made reference to the need for compliance with court consent orders but no such court order was brought to my attention.

32 In summary, I find that because the subject matter of the directive in the impugned letter by the Commission was also under adjudication by a competent court, the directive issued by the Commission to the RDC and DPC to preserve the status quo is ultra vires its powers as a purely investigative body whose role was to investigate and make recommendations for reform.

F. Remedies

33 Having found that the impugned letter directing the RDC and DPC to ensure the Applicant and agents cease and desist from carrying out activities and transactions on Block 358 was ultra vires the investigative mandate of the Commission, it follows that an order of Certiorari will issue quashing the directives.

34 Regarding prayer for general and aggravated damages, the Applicant has been vindicated by the order of Certiorari which provides sufficient relief without an award of damages. I therefore decline to award the Applicant damages.

35 Regarding the prayer for a permanent injunction, this too is declined for the reason the Commission is mandated to investigate adjudicative processes and make recommendations for reform and it's within this context that it summoned parties who also happened to be litigating over the same subject matter in court.

G. Summary of findings

- a. I find that the Applicant was accorded a fair hearing under the special circumstances where the Commission was carrying out an investigative function.
- b. The Commission in its investigative role does not have power to order the police to take charge of land for the purpose of, in the words of the Commission, '*as it investigates to bring the matter to its logical conclusion*'
- c. I find that because the subject matter of the directive in the impugned letter by the Commission was also under adjudication by a competent court, the directive issued by the Commission to the RDC and DPC to preserve the status quo is ultra vires its powers as a purely investigative body whose role was to investigate and make recommendations for reform.
- d. Having found that the impugned letter directing the RDC and DPC to ensure the Applicant and agents cease and desist

from carrying out activities and transactions on Block 358 was ultra vires the investigative mandate of the Commission, it follows that an order of Certiorari will issue quashing the directives.

H. Orders

- a. An order of Certiorari shall issue quashing the Commission's letter dated January 28, 2019 that directed the RDC and DPC to ensure the Applicant and his agents cease activities and transaction on Mengo Block 358 .
- b. The prayer for a permanent injunction stopping the Commission from investigating the land registration and adjudicative processes of the dispute over Mengo Block 358 is declined.
- c. The prayer for general and aggravated damages is declined.
- d. As the Applicant was partially successful, the Respondents shall severally and jointly pay 40 % of the taxed costs of this Cause to the Applicant.
- e. MA No. 274 of 2019 between the same parties for a temporary injunction has been overtaken by the above orders and is closed with no order as to costs therein.

DATED AT KAMPALA THIS 11TH DAY OF MAY 2020.

HON. LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Mugisha & Co. Advocates for the Applicant.

Attorney General's Chambers for the Respondents