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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE No. 177 OF 2018

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW FOR

10 **DECLARATION, ORDERS OF CERTIORARI AND PROHIBITION**

IN THE MATTER OF THE JUDICATURE ACT, RULES 3, 5, 6 AND

8 OF THE JUDICATURE, JUDICIAL REVIEW] RULES, S.I NO. 11

OF 2009

1. MOSES KAGGA BBIRA

15 **2. SERUNJOGI FAISAL**

3. LUBEGA JAMIRU::: APPLICANTS

VERSUS

THE ATTORNEY GENERAL OF UGANDA ::::::::::::::: RESPONDENT

20 **BEFORE HON. MR. JUSTICE BASHAIJA K. ANDREW**

RULING:

The Applicants jointly brought this application against the Respondent under judicial review pursuant to Section 36 of the Judicature Act; Rules 3, 5, 6 and 8 of the Judicature, (Judicial Review) Rules, S.I No. 11 of 2009; for reliefs that;

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- 5 ***a) A declaration that the Land Commission of Inquiry has no powers to interfere with the suit property Kibanja with rental units at Kyengera which is subject of Court matters.***
- b) An order of certiorari quashing the decision made by the Land Commission of Inquiry from interfering with the suit***
10 ***property.***
- c) An order in the form of damages to be paid to the Applicants.***
- d) Costs of the application be paid to the Applicants.***

The grounds are set out in the application and amplified in the Applicants' affidavits, but are briefly that in 2016 the 1st Applicant purchased the suit property from the 2nd Applicant who handed over the agreement between him and the former owner the 3rd Applicant and the 1st Applicant took possession of the property. In and around January 2018, a one Namutebi Safina went on property claiming ownership of the same which attempt was refuted. The
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20 said Namutebi Safina then filed Civil Suit No. 52 of 2018 against the Applicants in the High Court (Land Division). She sought for interim reliefs which the court declined to grant. She then abandoned the suit in court and chose to lodge a complaint with

5 the Land Commission of Inquiry which made decisions in respect of
the suit property. The Commission wrote a letter directing the
District Police Commander Wakiso District to provide security so
that a one Namutebi Safina can repossess the suit property.
Subsequently the Applicants sought an order for a temporary
10 injunction which was granted by this court to maintain the status
quo. That it is procedurally and legally wrong for the Land
Commission of Inquiry to interfere, discuss matters and take
decision over the suit property when there are active court matters
where the same property is subject. That it is in the interest of
15 justice that this application is granted.

The application is supported by four affidavits of the Applicants
including supplementary affidavit dated the 10th April 2019 which
are essentially amplifying the grounds above and hence need not to
be reproduced in detail. The Respondent neither filed an affidavit in
20 reply nor appeared in court when the matter came up for hearing
despite being duly served with the hearing notice and proof of
service filed on court record. Court thus proceeded *ex parte* under
Order 9 rule 20(1)(a) Civil Procedure Rules. Counsel for Applicants

5 filed written submissions, which court has considered in this ruling.

The following are the issues framed for court to determine;

1. Whether this is a fit and proper case for judicial review.

2. Whether the Commission of Inquiry into Land matters is

mandated to interfere into, and investigate matter which

10 **are subject to court proceedings and make final decisions**

over such disputes.

3. Whether the Applicants are entitled to the remedies sought.

Resolution of issues:

Issue No.1: Whether this is a fit and proper case for judicial

15 **review.**

The principles and the law that govern judicial review are well

established. In **Clear Channel Independent Uganda vs. PPDA**

H.C.M.A No. 380 of 2008, judicial review is stated as;

“...the process by which the High Court exercises its

20 **supervisory powers over the proceedings and decisions of**

inferior courts, tribunals and other bodies or persons

who carry out quasi-judicial functions or who are

engaged in the performance of public acts and duties.”

5 Article 42 of the Constitution, which is the bedrock of judicial review, recognizes the right of any person to apply to a court of law for judicial review against public bodies and/or agencies. It provides as follows;

10 ***“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him/her.”***

Thus, the right of any person to apply for judicial review is now recognized as a Constitutional right, as it was held in 15 ***International Consultants Ltd. vs. Jimmy Muyanja & 2 O’rs H.C.M.C No. 113 of 2018***. In that case, the court further held that, in accordance with Article 44 of the Constitution, the right cannot be derogated from.

In the instant application, the Applicant is challenging the decision 20 of the Land Commission of Inquiry to interfere, discuss matters and take decision over the suit property when there are active court matters where the same property is subject. In ***Walugembe Daniel vs. Attorney General HCMC No. 231 of 2018*** citing ***Fuelex***

5 ***Uganda Limited vs. The Attorney General & Others HCMC No. 48 Of 2014***, which was cited in ***Dr. Daniel K.N. Semambo vs. National Animal Genetic Resource, HCMC No. 30 of 2017***, the settled position is that in order to succeed in an application for judicial review, the Applicant has to show that the decision or act
10 complained of is tainted with illegality, irrationality and procedural impropriety.

The facts of the instant case show clearly that it is one that is amenable for judicial review. It seeks to challenge the decision making process of the Land Commission of Inquiry and the exercise
15 of the powers by the said Commission. Therefore, the application is one envisaged under ***Rule 3 of the Judicature (Judicial Review) Rules 2009 as amended by SI No.32 of 2019***. Issue No.1 is answered in affirmative.

***Issue No.2: Whether the Commission of Inquiry into Land
20 Matters is mandated to interfere into, and investigate matter which are subject to court proceedings and make final decisions over such disputes.***

5 In paragraph 5 of the 1st Applicant's affidavit, he states that it is procedurally and legally wrong for the Commission of Inquiry to interfere, discuss matters and take decision over the suit property when there are active court matters where the same property is the subject matter. Further, under paragraph 2 of his supplementary
10 affidavit, that among others, that Dr. Douglas K. Singiza of the said Commission, wrote a letter addressed to District Police Commander Wakiso District, requesting for security to the bearer of the said letter so that she could repose the suit property. ***In Muganzi Charles vs. Hon. Nantaba Idah Erios – State Minister of Lands, Housing and Urban Development, HCMC NO. 21 OF 2013,***
15 ***Murangira, J, while considering a case of similar circumstances held, inter alia, that;***

20 ***“... I agree with Counsel for the applicant that the Respondent should be prohibited from handling the matter concerning the suit land for the fact that the matter is the High Court of Uganda, at Nakawa.... The Minister, the Respondent, to usurp the mandate given to Courts by the Constitution of the Republic of Uganda is***

5 ***certainly wrong and unconstitutional. I am afraid, her
actions if not prohibited might cause more harm than
good in the locality where the suit land is located...***

In addition, ***Section 6 of the Commissions of Inquiries Act Cap
166***, which spells out the mandate of the Commission provides as
10 follows;

“6. Duties of commissioners.

***The commissioners shall, after taking the oath or
making the affirmation as provided in section 4, make a
full, faithful and impartial inquiry into the 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, in writing, the
result of the inquiry; and also, when required, furnish to
the Minister a full statement of the proceedings of the
commission and of the reasons leading to the conclusions
arrived at or reported.”***

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5 Nowhere in the provisions above is the Commission empowered or
supposed to make decisions and /or issue orders with the effect of
granting remedies that a party has failed to obtain from court as
was the case in the instant matter. There is also nothing like
hearing and reaching decisions/judgments in respect of complaints
10 brought before it. The Commission had no powers whatsoever to
make orders with the effect that Namutebi Safina repossess the suit
property while she had already filed HCCS No. 52 of 2018 in which
she is claiming the same suit property which she now brought to
the Commission's attention. By issuing the orders as it did in the
15 said letter, the Commission of Inquiry was interfering in a matter
which is already a subject of proceedings in the High Court, Land
Division, and as such the Commission acted *ultra vires* its mandate
under the **Commission of Inquiry Act** (supra); which is illegal and
unconstitutional.

20 Similarly, it is easily discerned from the facts in evidence that in
coming to the decision it did, the Commission of Inquiry never
accorded the Applicants any hearing let alone a fair hearing. This
contravened the *audi altarem patem* rule and violated the principle

5 of natural justice. Any decision arrived at in breach of the principles of natural justice is a nullity and cannot be allowed to stand.

Regarding procedural illegality of the Commission's decision, **Black's Law Dictionary 8th Edition**, defines an act or matter to be illegality if it is not authorized by law, contrary to the law. The same
10 definition was adopted by this court in the case of **Walugembe Daniel vs. Attorney General** (supra). As already found above, the Commission acted outside its mandate spelt under the law and hence its decision as contained in the letter referred to is illegal. In the same case, while pronouncing on the powers of the Commission,
15 this court had occasion to hold that;

***“Apart from the above, the decision which amounts to an order of the Commission of Inquiry invariably interferes with the independence of the Judiciary. On that account alone, it cannot reasonably be left to stand. It cannot be
20 over emphasized that the Commission of Inquiry has no mandate whatsoever to issue orders contrary to court orders or judgments over the same subject matter. The Commission of Inquiry is not a court of law. By ordering***

5 ***payment to persons other than the one ordered by court,
the Commission of Inquiry overstepped its mandate and
as such acted illegally.”***

Court had not departed from that position and it still takes the same view and accordingly, issue No.2 is answered in the negative.

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Issue No.3: Whether the Applicants are entitled to the remedies sought.

The Applicants sought for an order of certiorari to quash the impugned action/decision of the Commission. Like all the other
15 reliefs sought in this application, this too is meant to prevent the wrong and or unlawful decision of the Commission from being acted upon. Similar stance was taken in ***Re Retirement of David Behimibsa Bashakara by the District Service Commission, Mbarara District Local Government HCT-05-CV-MA- No. 0048 of***
20 ***2001.*** Acting outside the preview of the law especially in matters which are already before court of law should not attract sympathy from courts of law. In that regard it is the finding of this court that the Commission of Inquiry to has overstepped its mandate.

5 Therefore, the remedy of certiorari quashing the wrongful decision
to prevent the excess of the outright abuse of power by public
authorities, doth issue. An order of prohibition doth issue
prohibiting the Respondent's agent the Commission of Inquiry from
further acting in contravention of the law and *ultra vires* its
10 mandate.

In addition, the Applicants adduced evidence showing how they
have suffered inconveniences, embarrassments and mental anguish
as a result of the impugned decision of the Commission, for which
they seek general damages to be paid.

15 In ***Kampala District Land Board & George Mitala vs. Venansio
Babweyaka Civil Appeal No. 2 of 2007*** the position stated is that
damages are the direct probable consequences of the acts
complained of. Given the proof of the damages suffered as
adduced in evidence by the Applicants, court awards general
20 damages to the Applicants jointly in the amount of UGX.50 million.
It shall attract interest at court rate per annum from the date of
this ruling till payment in full.

The Applicants also prayed for costs of this application. Section 27
of the Civil Procedure Act provides that costs are in the discretion of

5 the court but shall follow the event unless for good reasons court
directs otherwise. There is no good reason to deny the Applicants
costs of this application which is awarded to them.

BASHAIJA K. ANDREW

JUDGE

20/03/2020.

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