

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS CAUSE NO.349 OF 2020**

**BARBARAH IMARYO:..... APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL:..... RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application under Section 36 and 38 of the Judicature Act Cap 13 and rules 3(1)(a) and 6 of the Judicature (Judicial Review) Rules, 2009 for the orders that;

- a) An Order for judicial relief by way of CERTIORARI quashing the decision of the Minister of Lands, Housing and Urban Development dated 7<sup>th</sup> December 2021.
- b) General damages
- c) Costs

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant of Ms Barbarah Imaryo but generally and briefly state that;

- 1) The applicant was appointed the Secretary of the Uganda Land Communication on 30<sup>th</sup> July 2020 and assumed duties on the 1<sup>st</sup> October 2020.

- 2) That on the 1<sup>st</sup> December 2021, the Inspector General of Government on account of allegations and investigations into the affairs of the Uganda Land Commission directed/ordered the Minister of Lands, Housing and Urban Development to interdict or cause the interdiction of the applicant with immediate effect.
- 3) That the Minister of Lands, Housing and Urban Development wrote a letter interdicting the applicant and was stopped from transacting any official business in conformity with the directive of Inspector General of Government unless guidance from His Excellency the President of the Republic of Uganda is received.
- 4) That in the said letter, the Minister reinstated a one Mugulusi Daniel as Accounting Officer of the Uganda Land Commission.
- 5) That the decision of the Minister of Lands, Housing and Urban Development to direct the interdiction of the applicant and conducting of official business was arbitrary, irrational and illegal.

The respondent filed an affidavit in reply through Vincent B Byendaimira-Commissioner Physical Planning in the Ministry of Lands, Housing and Urban Development briefly as follows;

- 1) That the applicant was interdicted on the orders of Inspector General of Government by a letter dated the 7<sup>th</sup> December, 2021 authored by the Honourable Minister of Lands, Housing and Urban Development.
- 2) That following the said interdiction of the applicant, the applicant ceased to perform functions of the Secretary Uganda Land Commission until the interdiction is lifted.
- 3) That the interdiction of the applicant was necessitated by the need to conduct investigations into the alleged misuse of funds under the Land Fund in Uganda Land Commission.

- 4) That the interdiction is an administrative measure aimed at ensuring that she does not perform her duties so that investigations can be conducted without a possibility of her interfering with them until they are concluded.
  
- 5) That the decision of the Minister of Lands, Housing and Urban Development to direct the applicant to stop to conduct official business was not arbitrary, irrational or illegal as it was done in furtherance of the administrative measures necessary to conduct the investigations.

At the hearing of this application the parties were directed to file written submissions which I have had the occasion to read and consider in the determination of this application.

The applicant's counsel raised two issues for determination by this court;

1. *Whether there is a cause of action for judicial review by the court?*
2. *Whether there are any remedies for the applicant?*

The applicants were represented by *Mr. Charles Ouma* whereas the respondent was *Mr. Oburu Odoi*.

This court has opted to redraft the main issue as follows;

***Whether the decision of the Minister of Lands, Housing and Urban Development to interdict the applicant was illegal?***

The applicant's counsel submitted that the powers of the Constitution provides for the appointment of the Secretary of Uganda Land Commission and vest the same in the President. The acts of the Minister of Lands, Housing and Urban Development was illegal since she had no jurisdiction to order the applicant out of office and to bar her from transacting any official business.

Under the Public Service Standing orders, 2021 to power to exercise disciplinary control is vested in the President for officers' of the rank of Head of Department and above. The action of the Minister to interdict the applicant was ultra vires since she has no power to discipline Heads of departments.

The applicant's counsel further contended that acts of the Minister of Lands, Housing and Urban Development was irrational since she failed to address her mind to the content of the letter for if she had done she would have realised that she cannot interdict the applicant. The mandate to discipline the applicant as Secretary of the Uganda Land Commission is a preserve of the President.

The respondents counsel submitted the decision of the Minister was neither arbitrary, irrational nor illegal as alleged. It was their contention that the IGG has the capacity to make the decision it made under Article 230(2) of the Constitution. Therefore, the applicant needed vacate office in order not to interfere with the investigations and that the discretion of the IGG to make orders in the course of its constitutional mandate should not be fettered.

### ***Analysis***

Judicial review per the Judicature ( Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over 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;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which in inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as

an arm of Administrative law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

The effectiveness of a system of judicial review under Administrative law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has suffered at the hands of the administration but generally for the maintenance of regime of Rule of Law in the country.

In Uganda, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration within the confines of the law. It has been felt that the courts and administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend

to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals' grievances against the administration, give relief to the aggrieved person in suitable cases and in the process control the administration.

In the present case, the applicant is challenging the decision of the Minister of Lands, Housing and Urban Development to interdict her because she is not vested with such power. Her actions were indeed illegal and contrary to the Constitutional and other laws governing the appointment of the applicant. The basis for the challenge of the applicant is that the Minister of Lands, Housing and Urban Development acted without authority or contrary to the law when she interdicted or caused the interdiction of the applicant upon direction of the Inspector General of Government.

**Section 24 of the Interpretation Act** provides:

***Where, by any Act, a power to make appointment is conferred, the authority having power to make the appointment shall have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint or reinstate any person appointed in the exercise of such power.***

It is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law—to the extent at least that it expresses this principle of legality—it is generally understood to be a fundamental principle of constitutional law.

Lawfulness thus stands at the core of the general constitutional law principle of legality and applies to all public actions. An analysis of lawfulness in administrative law thus always involves comparing the administrative action to the authorisation for that action in the relevant empowering provision. Therefore lawfulness or lack of mandate provides administrators/Ministers with the tools to identify specifically what they are entitled to do.

For every action that an administrator (Minister) takes, there must be a valid authorisation in an empowering provision. In absence of such authorisation the

administrative action will be unlawful. The Minister had no such mandate to interdict the applicant or to discipline the applicant as secretary of Uganda Land Commission. That is the preserve of the President. She should have brought the directive of the Inspector General of Government to the attention of the President and he would have taken appropriate action.*(Which the President later did)*

A particularly challenging part of lawfulness relates to the reason, purpose or motive for which the action was taken. This is especially the case where the empowering provision grants a wide discretion to the decision maker/administrator. It is very true that the office of Inspector General of Government has power to make recommendations to decision makers or responsible officers, such recommendations are not self-executing and must be acted upon in accordance with the existing legal framework. The IGG cannot direct a Minister to break the law, but the Minister or any responsible officer must address their mind to the law and act appropriately. The letter from the Inspector General of Government only gave the Minister of Lands, Housing and Urban Development options of what action to take: ***“You are therefore, directed/ordered, as the Supervising Minister, to interdict or cause the Interdiction of Ms Barbarah Imaryo from her duties as Secretary of Uganda Land Commission with immediate effect .”***

Where a statute creates different authorities to exercise their functions thereunder, each of such authority must exercise the functions within the four corners of the statute. A statutory authority must be permitted to perform its statutory functions in respect whereof even any higher authority cannot issue any direction. It was therefore, wrong for the Minister of Lands, Housing and Urban Development to interpret the letter from IGG as an interdiction since the IGG equally had no power to interdict the applicant.

The decision of the Minister of Lands, Housing and Urban Development was therefore illegal.

Accordingly this issue succeeds and it is resolved in the positive.

*Whether there are any remedies for the applicant?*

Since the court has found the decision of the Minister of Lands, Housing and Urban Development was illegal. The only option available to this court is to quash the decision for illegality.

Therefore, an Order of Certiorari issues quashing the decision of the Minister of Lands, Housing and Urban Development.

The applicant is granted costs of this application.

I so Order

***SSEKAANA MUSA***

***JUDGE***

***8<sup>th</sup> August 2022***