

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 63 OF 2021**

- 1. WADIA CONSTRUCTION CO. (U) LIMITED**
- 2. PUNJALAL MAVJI:..... APPLICANTS**

VERSUS

- 1. THE COMMISSIONER LAND REGISTRATION**
- 2. KAYAGA EVALINE**
- 3. BAKYAYITA KIZZA JOSEPH**
- 4. DANIEL SEKITENDE:.....RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application is brought under Articles 28(1), 42, 45 and 128 of the Constitution of the Republic of Uganda, Sections 33,36, and38 of the Judicature Act, Section 98 of CPA, Rules 3, 6, 7 and8 of the Judicature (Judicial Review) Rules S.I No. 11 of 2009 as amended by SI No. 32 of 2019, Order 52 Rules 2 and 3 of the Civil Procedure Rules S.I No. 71-1. Seeking for;

1. Time be extended for the filing of this judicial Review Applications.
2. An order of certiorari does issue quashing the 1st Respondents administrative decision to amendthe Register for the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108.
3. An order of Certiorari does issue quashing the cancellation of the registration of Mr. Punjalal Mavji on Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District.
4. An order of Certiorari does issue quashing the cancellation of the registration of Wadia Construction Co. (U) Limited on Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108.

5. An order of Certiorari does issue quashing the registration of Joseph Bakyayita, Everine Kayaga and Sekitende Daniel for Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu Kiryamuli, Mukono District.
6. An order does issue quashing the issuance of the special certificate of Title to Joseph Bakyayita, Everine Kayaga and Sekitende Daniel for Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District.
7. An order of prohibition does issue barring/restraining the 1st Respondent, its servants or agents or any other person acting on their behalf from amending the Register for the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 without following due process.
8. A declaration that the 1st Respondent in conducting an administrative hearing regarding the ownership of the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 which is subject of High court Civil Suit No. 65 of 2016 between Kayaga Evaline & Joseph Bakyayita Kizza Joseph v Punjalal Mavji, Wadia Construction Co. Ltd, Drusila Nankya& the Commissioner Land Registration before Mukono High court Circuit acted illegally, irrationally and without jurisdiction.
9. A declaration that conducting an administrative hearing regarding the ownership of the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 without effective service to the Applicants of the notice of the complaint and the hearing was illegal and the entire process was riddled with procedural impropriety.
10. A declaration that the impugned administrative hearing conducted by the 1st Respondent at the instigation of the 2nd, 3rd, and 4th Respondents was in violation of the Applicants right to a fair hearing and just determination of disputes before an impartial public officer/tribunal which rights are guaranteed under Article 28 (1), 42, 45 and 128 of the Constitution and was thus illegal.

11. A declaration that the 1st Respondent acted illegally when he failed/refused and/or declined to serve the Applicants with the decision reached pursuant to the impugned administrative hearing regarding the ownership and registration of the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 as required by Section 91 of the Land Act Cap 227 as amended.
12. A declaration that the amendment of the Register and cancellation of the Applicants certificates of tittles for the land comprised in Kyaggwe Block 80 Plot 108 was illegal, void ab-initial and of no legal consequence.
13. A declaration that all decisions and actions of the 1st Respondent, his agents premised on the impugned administrative hearing regarding the ownership and registration of the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register volume 3878 Kyaggwe Block 80 Plot 108 are contrary to the law and illegal.
14. A declaration that the impugned administrative hearing and the resultant amendment of both the Mailo and Leasehold Register in respect of Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 were undertaken without jurisdiction.
15. An order of Mandamus directing and compelling the 1st Respondent, its servants and/or agents or any other person to reinstate the Applicants registration and certificates of tittles for land comprised in Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 and Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District respectively.
16. Costs of this Application be provided for.

The grounds upon which this application is based are contained in the affidavit of Mr. Darshan Wadia & Mr. Punjalal Mavji for the applicants and are as follows;

1. That the applicants are and have been in occupation of the land comprised in Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 and Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District since 2006 to date.

2. The applicants were the registered proprietors of the land comprised in Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 and Mailo Register Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and are in possession of their respective certificates of title.
3. That the 1st Respondent is a public officer established under Section 4 of the Registration of Titles Act Cap 230 charged with the mandate of among others land registration, issuance of certificates of Tittle, alteration, cancellation and issuance of fresh tittle in accordance with the law.
4. The 2nd, 3rd and 4th Respondents are adult persons believed to be of sound mind and claiming to be the Administrators of the estate of the late Bukulu Misusera who were issued with a special certificate of tittle for the land comprised in Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District subsequent to the impugned amendment of the Register and cancellation of the Applicants certificates of title.
5. That the 1st Respondent illegally conducted an administrative hearing of a complaint lodged by the 2nd, 3rd, and 4th Respondents regarding the Applicants certificates of tittle for the land comprised Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 and Kyaggwe Block 80 Plot 108 which were/ are the subject of adjudication by the High Court in Civil Suit No. 65 of 2016 filed by the 2nd and 3rd Respondents herein against the Applicants and 1st Respondents.
6. The 1st Respondent in undertaking the impugned administrative hearing, amendment of the Register, cancellation of the Applicants certificates of title, issuance of a special certificate of title and registration of the 2nd, 3rd, and 4th Respondents interfered with the High Court's exercise of its judicial function to dispense justice fairly and impartially to the parties in High court Civil Suit No. 65 of 2016 filed by the 2nd and 3rd Respondents against the Applicants and the 1st Respondent.
7. That the 1st Respondent conducted the impugned administrative hearing in breach of rules of natural justice, the constitutional right to be heard and in total disregard of the judicial independence which are guaranteed under the 1995 constitution of the Republic of Uganda.

8. The impugned administrative hearing and the subsequent amendment of the Register, cancellation of the Applicants certificates of title, issuance of special title and registration of the 2nd, 3rd, and 4th Respondents as proprietors of the land comprised in Kyaggwe Block 80 Plot 108 were done without jurisdiction and without following due process.
9. That the 1st Respondent in breach of Section 91 of the Land Act Cap 227 as amended failed/ refused to serve the Applicants with its impugned decision to amend the Register and cancel their respective titles.
10. That the 1st Respondent did not notify the Applicants of the impugned decision to amend the Register, the cancellation of their titles and issuance of special title to the 2nd, 3rd, and 4th Respondent and only got to know of the irregular and illegal decision/actions on the 19th day of February 2021 when they conducted a search at the Ministry of Land, Housing and Urban Development. Mukono Zonal Office.
11. The Applicants were awakened to conduct the said search by a letter from Counsel for the 2nd and 3rd Respondents M/s Parkhill Advocates (formerly Aler & Co. Advocates) dated 25th January, 2021 in which they were requesting for access to the property apparently for purposes of taking prospective purchasers to inspect the applicants said land.
12. The 1st Respondent could not in law conduct an administrative hearing in a matter which is subject of an active court proceeding before the High Court and in which the 1st Respondent is a party.
13. That the 1st Respondent was legally required to ensure that the applicants are not only served with the notice of the hearing and the complaint lodged by the complainants but also that the Applicants are served with the impugned decision to amend the Register and cancel their respective certificates of titles.
14. The 1st Respondents behaviour of undertaking administrative hearing in respect of Leasehold Register Volume 3878 Kyaggwe Block 80 Plot 108 and Kyaggwe Block 80 Plot 108 parallel to the proceedings of the High Court under High Civil Suit No. 65 of 2016 before the Mukono High Court Circuit undermined and usurped the jurisdiction of the High Court and constituted a blatant abuse of court processes.

15. The 1st Respondents impugned decision to amend the Register and cancel the Applicants titles and all other actions premised on the said impugned decision are unfair, irrational, irregular, improper, ultra vires and illegal.

16. That unless this Honourable Court intervenes by issuing the court orders sought by the Applicants, the 1st Respondents shall continue to perpetuate illegalities, bad faith, malafides and injustice to the Applicants.

The respondents opposed the application and filed two; affidavits in reply one deposed by the 3rd Respondent Bakyayita Kizza Joseph on behalf of himself, the 2nd and 4th Respondents and the other one deposed by Banumba Francis Acting Principal Registrar of Titles on behalf of the 1st Respondent. The Respondents vehemently in opposition stated that the applicants are not entitled to orders sought.

That the 1st Respondent acted within the confines of the law and that the applicants are not entitled to any remedies. And therefore, that the omnibus application for Extension of time and Judicial Review should be dismissed with Costs.

That the applicant's application is tainted with so many illegalities to be granted and that if it's granted the Respondents shall be highly prejudiced and inconvenienced and deprive them of their constitutional right of enjoyment of their property.

The respondents contended that the 1st respondent properly exercised its powers within the law to cancel the applicant's titles comprised in Kyaggwe Block 80 Plot 108 and a Leasehold LRV 3878 on Kyaggwe Block 80 Plot 108 which had been erroneously transferred and created into their names with a validly registered caveat vide Instrument No. MKO81890 and Court Order vide Instrument No. MKO085670 which is an illegality/ or error under the law which the 1st respondent has powers to rectify such error which did not require a court order.

The applicants were duly served and notified by the hearing conducted by the 1st respondent which notice were delivered by registered mail under receipt numbers M-UGKL-0719212968 & M-UGKL-079212967 to P.O.Box 21985 & 70533 both for Kampala for a public hearing on 26th July 2019 at 10:00Am.

The applicants after they got to know about the cancellation of the land titles, through their lawyers Mr. Joseph Kyazze and Mr. Kankaka Ali engaged the lawyers of the respondents for an amicable settlement of the dispute wherein they accepted to sell off the suit property and the proceeds be shared between the 2nd, 3rd, & 4th respondents.

The applicants were represented by *Kankaka Ali*, while *Slyvester Ndawula* appeared on behalf of the 2nd, 3rd, and 4th Respondent whereas *Arinaitwe Sharon & Ssekitto Moses* appeared on behalf of the 1st Respondent.

The court directed the parties to file their written submission which were duly filed and have been considered by this court in the determination of this application.

Issues

1. *Whether the Applicants are entitled to extension of time with which to file the Application for Judicial Review.*
2. *Whether the impugned decision and/or actions of the 1st Respondent are tainted with illegality, irrationality and procedural impropriety?*
3. *What remedies are available to the parties?*

Determination

Whether the Applicants are entitled to extension of time with which to file the Application for Judicial Review.

Counsel for the applicants submitted that it trite Law that applications may be brought omnibus where applications are of the same nature, have the effect of mitigating multiplicity of suits with one being the consequence of the other or where no injustice would be occasioned to the other party as in the case of **ABSA Bank Uganda Ltd & Anor. v Electro- Maxx (U) Ltd & Anor. High Court Misc. Application No. 241 of 2020.**

Counsel for the applicants submitted that the applicants deposed under paragraph 10, 11, 12 and 13(f) Darshan Wadia's affidavit in support of the motion where they demonstrated that they were not aware of the impugned administrative review proceedings undertaken by the 1st Respondent and neither were they informed of the decision reached as required by the law

under which the Commissioner purported to act yet the law required the 1st Respondent to notify the Applicants of the decision reached before effecting the amendment in the Register **as provided for under Section 91 (2b) of the Land Act Cap 227 (as amended)**. Counsel for the applicants submitted that the applicants were unaware of the impugned public hearing.

Counsel for the applicants further contended that the applicants only became aware of the decision reached by the 1st Respondent in the impugned administrative hearing after conducting a search and found that their certificates of titles were cancelled by the 1st Respondent.

Further still counsel for the applicants submitted that this honourable Court has a duty to determine matters presented before it without undue regard to technicalities per Article 126 (2) (e) of the constitution and in the case of ***Uganda Law Society v Kampala Capital City Authority & Anor. Misc. Cause No. 243 of 2017.***

Counsel for the applicants invited this Honourable Court to apply the rationale in the case of ***Kuluo Joseph Andrew & 2 others vs AG and 6 others HCCM No. 106 of 2010*** where it was held that the time limits are more intended to ensure expeditious determination of the applications for judicial review than to oust the jurisdiction of courts to hear the parties after the prescribed period. And hence prayed to this honorable court to exercise its discretion and considers that there is a good reason to extend time within which to apply for review.

Counsel for the Respondents submitted that the Applicants are not entitled to the extension of time or leave to file for Judicial review Application since they have not provided any reasonable and sound reasons for such an inordinate delay. Further still that the applicants claimed that they were not aware of the hearing yet there is evidence of a letter by the Applicants lawyer of M/s Magna Advocates which clearly shows that the Applicants as of 10th/ Oct/2019 were well aware of the hearing/actions before the 1st Respondent.

Counsel further submitted that the Applicants affidavits are full of falsehoods and that they have failed to convince Court as to why they delayed to file the application yet all along have been aware of the decision since 2019 but resorted to making lies before Court and also the applicants deliberately told court obvious falsehoods and submitted that court should not grant leave to the applicants to file this Application out of time.

Counsel for the Respondent further submitted relying on the case of **ABSA Bank Uganda Ltd & Anor v Electro-Maxx (U) Ltd & Anor HCMA No. 241 of 2020** cited by counsel for the Respondents that it was also not respect to Judicial Review Applications but rather an appeal and stay of the interim Order, thus this authority is irrelevant to the matter before court, even then, reasons for the extension were provided in that case unlike the Applicants who have failed to provide any reason.

Analysis

Under Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that;

*(1) An application for judicial review shall be made promptly and in any event **within three months from the date when the grounds of the application FIRST arose**, unless the court considers that there is good reason for extending the period within which the application shall be made.*

It is clear that the applicants were out of time by the time they filed this application for judicial review. However, they contend that they were never made aware of the decision to cancel the titles until February 2021.

The applicants did not seek leave of court to extend the time within which such an application can be brought and opted to seek leave within the same application which is irregular although sometimes it may be granted at the discretion of the court. The extension of time is a condition precedent and it must be sought before a person can access court for the judicial review application.

This court does not agree with the submissions of the applicants' counsel that time limits are technicalities and should be dispensed with. In the case of **Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000**; The court of Appeal noted that; Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

The reasons advanced for the delayed filing should have been advanced at the time of applying for leave to extend the time of filing for judicial review. The rule of laches is not a rigid rule which can be cast in a strait-jacket. The courts do not follow a rigid, but a flexible, measure of delay. It should be emphasized that the rule that the court may not enquire into belated and stale claims is not applied in a rigid manner.

The court ought not to consider stale claims by persons who have slept on their rights. Any application brought under the Constitution or by way of judicial review could not be entertained if presented after lapse of a period fixed by limitation legislation. Thus, where an action is statute barred, a party who might otherwise have had a cause of action loses the right to enforce the cause of action by judicial process, because the period of time laid down by the limitation law for institution of such has lapsed.

If the applicants wanted to invoke the jurisdiction of this court they should have come at the earliest reasonably possible opportunity or sought leave of the court to file their application out of time but not to file the same as of right after expiry of the time set by law. Inordinate delay in making an application for judicial review will always be a good ground for refusing to exercise such discretionary jurisdiction of this court to entertain the application.

Once a party is caught by the limitation period, then such an application cannot be brought to court before leave is granted otherwise every applicant would flood courts as if the period of 3 months set out under the rules is redundant.

The applicants argued that they were not aware of the administrative hearing and were not informed of the decision reached by the 1st Respondent in time and got to know of the decision on the 19th/February/2021 thus making an application for Judicial review out of time. The respondents however contend that the Applicants were aware of the administrative hearing and chose not to attend and that they also got to know about the decision of the 1st Respondent.

The evidence on court record shows that the applicants were aware of the intended rectification of the register as can be discerned from the letter dated 10th October 2019 which was filed in court and also served on the 1st respondent on 11th October 2019. This is also buttressed by the communications between the applicants counsel and respondents counsel between 25th September and 3rd November 2020.

Therefore, it is not true that the applicant became aware of the cancellation of their title in February 2021 as contended.

This application would fail for being filed out of the 3 months period. However, for completeness let me determine the merits of the application.

Whether the impugned decision and/or actions of the 1st Respondent are tainted with illegality, irrationality and procedural impropriety?

The applicants submitted in assertion of being the registered proprietor of land in subject comprised in Kyagwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District and Land comprised in Leasehold Register Volume 3878 Folio 9, Kyagwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District.

That since 2007 to date, the 1st Applicant has been the registered proprietor of that same land and is in possession of its certificate of Title. However, the respondents have been involved in a legal dispute regarding the ownership of the land comprised in Leasehold Register Volume 3878 Folio 9, Kyaggwe Block 80 Plot 108 land at Buntaba, Dundu, Kiryamuli, Mukono District vide High Court Civil Suit No. 65 of 2016- Kayaga Evaline and Bakayayita Kizza Joseph v Punjalal Mavji, Wadia Construction Co. (U) Ltd, Drusila Nankya and the Commissioner Land Registration at Mukono High Court Circuit.

That the 2nd and 3rd Respondents sued the Applicants, the 1st Respondent and Drusila Nankya challenging the Applicants registration and ownership of the said land on allegations of fraud and the suit is still pending determination that however not withstanding the subsistence of the high court civil suit, the 1st Respondent conducted an administrative hearing and, made a decision to amend the register and cancelled the applicants title and issued a special certificate of title to the 2nd, 3rd and 4th Respondent. Thus, the applicants brought this application for judicial Review challenging the illegal exercise of the quasi-judicial administrative authority conferred upon by the 1st Respondent for breach of due process, illegality, irrationality, exercising power not vested under the circumstances and none compliance with mandatory legal provision of the law.

Counsel further cited **Section 91(1) of the Land Act Cap 227 (as amended)** which provides that *“subject to the Registration of Titles Act, the Commissioner shall, without referring the matter to a court.... Have powers to take such steps as are necessary to give effect to this Act, Whether the endorsement or alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise”*.

Thus counsel submitted that since the matter was already referred to court the commissioner had no jurisdiction to carry out the impugned administrative hearing and/or cancellation of the Applicants title.

In addition, counsel for the applicants contend that since the 2nd and 3rd Respondents in **High Court Civil Suit No. 65 of 2016** alleged that the transfer of the suit land to the applicants was tainted with fraud, it was not proper for the 1st Respondent to cancel the applicants title, as its well-articulated under **Section 91(2) of the Land Act** which clearly spells out the powers of the Commissioner Land Registration and that his/her powers does not include cancellation of certificates of title where fraud is alleged.

The same was further emphasized in the case of ***Hilda Wilson Namusoke & Ors v Owalla's Home Investment Trust (EA) Ltd and Another Supreme Court Civil Appeal No. 15 of 2017*** where it was stated that;

".....the Commissioner who may exercise quasi-judicial powers would not have the capacity to hear a matter involving fraud and make findings without calling evidence including cross-examination of the witness alleging fraud. Consequently, the power to cancel certificates of title where fraud is alleged is vested in the High Court...."

However the Respondents urged that the decision was misapplied to the present case because the 1st Respondent did not state in any way that the Applicants titles were cancelled for fraud but rather errors.

Thus, the applicants contends that the 1st Respondents act of conducting administrative hearing regarding the ownership of the suit land which is subject to *High Court Civil Suit No. 65 of 2016 between Kayaga Evaline & Joseph Bakayita Kizza Joseph v Punjalal Mavji, Wadia Construction Co. (U) Ltd, Drusila Nankya & The Commissioner Land Registration* was done illegally, irrationally and without jurisdiction.

The Respondents however argues that the 1st Respondent duly exercised its powers within the law to rectify the errors/illegalities which were committed by the applicants who became registered on the subject land when there was a subsisting caveat and a court order.

Analysis

The 1st respondent is empowered under the law to rectify the errors or illegalities which are on the register. An illegality simply means; An act that is forbidden by law: The state of not being legally authorised. ***See Black's Law Dictionary 11th Edition 2019.***

The applicants got registered on the said land while there was a caveat forbidding any transactions on the suit land and in addition there was a

subsisting court order equally forbidding any such dealings and transfer of suit land. These are clear illegalities which can be corrected by the Commissioner Land registration. The Amendment of Register clearly shows that *decision is premised on the fact the transfer of title from Drusila Nankya into the names of Punjalal Mavji and the registration of the lease in favour of Wandia Construction Co. (U) Ltd were done erroneously since there was a caveat of Kayaga which was never released from the certificate of title.*

The argument of the applicant's counsel that since there was a matter in court filed between the 2nd and 3rd respondent and the applicants then commissioner had no jurisdiction to carry out the impugned administrative hearing and/or cancellation of the applicants titles is devoid of merit. The pendency of any suit should not be a bar on the Commissioner Land Registration unless there is a court order stopping the exercise of such power. Therefore, court matters should not be used by fraudsters as a scarecrow against the commissioner land registration to restrain the office from exercising their statutory mandate of maintaining a clean register.

The argument of counsel about a pending suit seems to be rooted in the *sub-judice rule* and this court noted in case of ***Hezekiah Mukiibi & Jonathan Magala v Commissioner Land Registration HCMC No. 98 of 2019*** as follows;

“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.”*

The decision of the decision of the 1st respondent was therefore not tainted with illegality as contended by the applicants.

Procedural impropriety

The 1st applicant contends that no man shall be a judge in his own cause that the 1st Respondent having been sued in the said Civil suit raising serious allegations of fraud, instead of filing a defence purported to carry out

administrative hearing and canceled the Applicants titles in total violation of due process.

The right to fair hearing is a non derogable constitutional right guaranteed under **Article 28(1) and Article 42 (c) of the Constitution of the Republic of Uganda**. Thus, the action of the 1st Respondent not to accord a fair hearing to the applicants was null and void and also was contempt of the High Court and due process. And that the 1st Respondent's undertaking the impugned administrative review hearing and purporting to amend the register not only violated the sub-judice rule but was also contemptuous of the High Court and due process.

The applicants further asserted that the 1st Respondent's action of amending the register before giving them written notice of the decision reached at the impugned administrative hearing violated the explicit provision of the law and therefore acted illegally.

The respondents further contended that the Applicants have not adduced any evidence to effect that the address which appears on their titles was no longer their address or any change of address and that the fact that the applicant's lawyers wrote to the commissioner Land Registration on 10th October 2019 and attached the notices all explains that the Applicants duly received the notice but ignored the same hence the 1st Respondent properly exercised its powers within the law.

Finally, the Respondents submitted that the 1st Respondent properly conducted a hearing which the Applicants failed/ignored to attend and the decision was taken.

Analysis

In the instant case, the Applicants argued that they were never informed about the administrative hearing which was conducted by the 1st Respondent and after the decision was not made known to the Applicants, though no concrete evidence was given, the Respondents contend that the applicants were served with the notices and failed to attend and that the decision was communicated to them.

Essentially, procedural fairness involves elementary principles that ensure that, before a right or privilege is taken away from a person, or any sanction is

otherwise applied to him or her, the process takes place in an open and transparent manner. It is also called 'fair play' in action and embraces the means by which a public authority, in dealing with members of the public, should ensure that procedural rules are put in place so that the persons affected will not be disadvantaged and are treated justly and fairly.

Article 42 of the Constitution provides;

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 or her.

The applicants seem to confuse the right to just and fair treatment in administrative decisions under Article 42 with the right to a fair hearing under Article 28 of the Constitution. The two rights are quite different and distinct since the latter is only applicable before an independent and impartial court or tribunal established by law. Therefore, the proceedings before the Commissioner Land Registration cannot be treated as court proceedings in order to require fair hearing as envisaged under Article 28 of the Constitution.

In working out what amounts to 'justly and fairly' treatment, the courts are wary of over-judicialising administrative process. They recognise that administrative decision-makers are not courts of law, and that they should not have to adopt the strict procedures of like a court or tribunal. Where a person is accorded an opportunity to be heard and fails or refuses to appear before the decision-maker, they cannot contend that their right to be heard was violated like in the present case.

The applicants were notified through the registered mail as provided for under the Registration of Titles Act and indeed there is evidence to prove service by registered mail. The applicants have not denied the post office address through which the notices were sent. Indeed, the applicants counsel were aware of the intended amendment to the register and they wrote to the 1st respondent on 10th October 2019 contending that they had been made aware of the Notice to Effect changes.

The court should look beyond the narrow question of whether the decision was taken in a procedurally improper manner, to a question of whether a decision properly taken would have been any different or would have benefited the applicants. The applicants as an afterthought believe they were denied a fair hearing after they failed or refused to attend a hearing before the

Commissioner Land Registration. Once a party has been given ample opportunity to defend himself, and the party does not avail himself of that opportunity, then the party cannot complain that he was deprived of the right to be heard. As a general rule, a person who has himself /herself impeded or tried to frustrate a hearing cannot afterwards be heard to complain that he did not receive a notice or was denied a fair hearing. It therefore, implies that such a party has waived his right to complain about denial of the right to be heard.

The applicants were accorded a right to fair hearing in the circumstances of the present case.

This application would still have failed even if it had been filed in time. This application is dismissed with costs to the respondents.

I so order.

Ssekaana Musa

Judge

31st October 2022