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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)**

**MISCELLANEOUS CAUSE NO. 172 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

10 **MOHAMMED MAGEZI:..... APPLICANT**

**VERSUS**

**COMMISSIONER LAND REGISTRATION:.....RESPONDENT**

**BEFORE: HON. JUSTICE ESTA NAMBAYO**

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**RULING**

The Applicant, Mohammed Magezi, brought this application against the Commissioner Land Registration under **Section 98 of the Civil Procedure Act and The Judicature (Judicial Review) Rules, 2009**, seeking for: -

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a) **An order for certiorari to issue calling for and quashing the letter and/or decision dated 17<sup>th</sup> November 2015 wherein the Respondent cancelled the Applicant’s Certificate of Title for property comprised in Kyaddondo Block 234 Plot 291 at Kilinya on the basis that;**

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i. **The orders and directions contained in the Respondent’s letter dated 17<sup>th</sup> November 2015 are irrational, arbitrary, illegal and oppressive as they were issued without according the Applicant a hearing and in disregard of orders of the High Court restraining all parties from taking any action in respect of the said property;**

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ii. **The order, changes and directions are extremely oppressive to the Applicant as he was never heard or informed before making the impugned decision;**

iii. **The orders, changes and directions are high handed and amount to usurping powers of Court by the Respondent;**

b) **A consequential order be issued reinstating the Applicant as the registered Proprietor of the suit property;**

- 35 c) **A declaration that in cancelling the Applicant's title without according him an opportunity to be heard, the Respondent acted unconstitutionally and in disregard of the key tenets of natural justice;**
- d) **General damages; and**
- e) **Costs of this application be provided for.**

40 Grounds of this application are well laid out in the Applicant's affidavit in support of the application but briefly are that;

- i. **On the 20<sup>th</sup> September 1991, M/S KNK & MNB General Traders Ltd obtained credit facilities from M/S International Credit Bank Ltd (in liquidation).**
- 45 ii. **The said borrowing was secured by a mortgage over property comprised in Kyadondo Block 234 Plot 291 at Kirinya.**
- iii. **The borrower defaulted on the mortgage and as a result the suit property was sold to the Applicant after a public auction.**
- iv. **At the time of the sale, there was no order or caveat restraining any**
- 50 **parties from realizing the securities.**
- v. **In 2006, Francis Ssengendo filed a suit against the Respondent and International Credit Bank Ltd challenging the mortgage in favour of International Credit Bank Limited.**
- vi. **Francis Ssengendo then proceeded and obtained an interim order**
- 55 **against the Respondent and ICB restraining all parties from taking any action in respect of the suit property till the disposal of the suit.**
- vii. **During the pendency of the suit, the Respondent cancelled the Applicant's Certificate of Title under unclear circumstances.**
- viii. **The Applicant was never heard before the cancellation of his title and**
- 60 **alleged transfer of his entry to property comprised in Plot 234.**
- ix. **The decision of the Respondent to cancel the Applicant's Title is irrational and unreasonable as no reasonable person addressing his mind to the facts and the law can make such a decision. It is outrageous and in defiance of logic since the Applicant only acquired**

65 an interest in Plot 291 and not 293 which the Respondent decided to allocate to him; and

x. It is in the interest of justice that this application is granted.

The Respondent never filed its reply to the application, although there is proof on court record that it was served with the application.

70 **Representation**

Learned Counsel Kassim Muwonge appeared for the Applicant.

**Issues for trial are: -**

1. Whether the decision of the Respondent in cancelling and transferring the Applicant's Title from 291 to Plot 293 is fair, rational and just treatment
- 75 2. Whether the Applicant is entitled to any remedies sought in this application

**Issue 1: Whether the decision of the Respondent in cancelling and transferring the Applicant's title from 291 to Plot 293 is fair, rational and just treatment**

80 Counsel for the Applicant submitted that the Applicant was the registered proprietor of property comprised in **Kyadondo Block 234 Plot 291 land at Kirinya**. That on the 17<sup>th</sup> November, 2015, the Respondent wrote to the Applicant notifying him that title in the suit property had been cancelled following an earlier letter dated the 27<sup>th</sup> May, 2014 requiring the Applicant to deliver his title to the Respondent but that the Applicant failed to do so. That it is the Applicant's contention that the said letter

85 was not served on him and as such, it was illegal, irrational, unjust and procedurally improper for the Respondent to cancel his title without giving him an opportunity to be heard. Counsel relied on the case of *Francis Bahikirwe Muntu & 15 Others -v- Kyambogo University Misc. Application No. 643 of 2005* where court noted that;

90 *"illegality is when a decision making authority commits an error of law in the process of taking a decision. The exercise of power that is not vested in the decision making authority is such an instance...irrationality is when the decision*

95 *making authority acts so unreasonably that in the eyes of Court, no reasonable authority addressing itself to the facts and the law before it would have made such a decision. Such a decision must be outrageous in its defiance of logic or accepted moral standards that no sensible person applying his mind to the question to be decided could have arrived at such a decision... procedural impropriety is when a decision making authority fails to act fairly in the process of its decision making. It includes failure to observe basic rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It also involves failure by an administrative authority or tribunal to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."*

105 He explained that although section 91 of the Land Act, as amended mandates the Respondent to correct errors on the certificate of title, Section 91 (2) thereof, provides for instances in which the Respondent, subject to the Registration of Titles Act effects such mandate. That in this case, the Respondent did not correct any error but transferred the Applicant's title from one plot to another, hence exercising powers not vested in her but rather in the High Court under Section 177 and 181 of the Registration of Titles Act. Counsel relied on the case of *Ssemakula Sulaiti -v- Commissioner Land Registration & Anor Misc. Cause No.75 of 2009*, where Court held that;

115 *"it should be noted that under the Registration of Titles Act, the Certificate of title is highly revered as indefeasible or unimpeachable except for fraud. Additionally, the interest and estate of a bona fide purchaser for value even if acquired through fraud but not attributed to the bona fide purchaser is also protected. Section 59,63,176 and 178 of the Registration of Title's Act provide this guarantee and protection of the certificate of title and bona fide purchaser for value. In effect the 1<sup>st</sup> Respondent does not have the jurisdiction nor mandate, power or authority to cancel a certificate of title on account of fraud and accordingly could not have cancelled the Certificate of title for the applicant..."*

He submitted that the Respondent acted illegally when she cancelled the Applicant's title in Plot 291 and transferred his interest to plot 293. That the Respondent also acted irrationally because the Applicant had never acquired any interests in Plot 293 but rather his interest was in plot 291. That the Respondent at its own volition changed the Applicant's interest to Plot 293 and yet the registered proprietor of Plot 293 was different from the Applicant. Counsel argued that the actions of the Respondent to arbitrary effect an entry on a different property and transfer it to another property is irrational, it defies logic and that no reasonable tribunal subjecting itself to the facts and the law would come to such a conclusion as plot numbers are independent of each other and the Respondent cannot just choose to allocate a plot where one has not acquired interest and that the Respondent's action was also procedurally improper. He prayed that the decision to cancel the Applicant's title to Plot 291 be quashed for the Respondent's non-compliance with S.91 (8) (b) of the Land Act and that this court makes an award of Ug. Shs 50,000,000/= (fifty million shillings only) to the Applicant for the inconveniences suffered.

### **Analysis**

**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.

In the case of *Kuluo Joseph & others vs the Attorney General & 6 others Miscellaneous Application No. 106 of 2010*, Yorokamu Bamwine J, (as he then was), observed that: -

***“judicial Review, involves the assessment of the manner in which the decision is made. The jurisdiction is exercised in a supervisory manner, not to vindicate the rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality.”***

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]3 ALLER 141**).

***S.91 of the Land Act provides that;***

155 ***(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.***

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

***(a) is issued in error;***

***(b) contains a wrong description of land or boundaries;***

***(c) contains an entry or endorsement made in error;***

***(d) contains an illegal endorsement;***

165 ***(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.***

170 Annexure "E" to the application shows that the Respondent had written to the Applicant on the 27<sup>th</sup>, May 2014 notifying him of an error on his title and requesting him to avail his certificate for plot 291 for her perusal but that the Applicant did not comply. The Respondent then went ahead to rectify the error. It is the Applicant's contention that he never received any notification or request from the Respondent  
175 to that effect.

***S. 91 (3) of the Land Act provides that if a person holding a certificate of title or instrument referred to in subsection (2) fails or refuses to produce it to the commissioner within a reasonable time, the commissioner shall dispense with***

180 *the production of it and amend the registry copy and where necessary issue a special certificate of title to the lawful owner.*

In this case, the Respondent did not file its reply to the application, although there is evidence on court record that it was served with the application. Failure to file an affidavit in reply by the Respondent should be interpreted to mean that the facts contained in the Applicant's affidavit were admitted. (see the case of **Samwiri Massa -v- Rose Achen 1987 HCB 297**).

In view of the above, I would find that the decision of the Respondent to cancel and transfer the Applicant's title from 291 to Plot 293 without notifying the Applicant and giving him an opportunity to be heard as required by law amounted to unjust treatment.

190 **Issue No. 2: Whether the Applicant is entitled to any remedies sought in this application.**

*Section 91(10) 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.*

195 *In Naku & 2 Ors -v- Commissioner Land Registration & Anor Civil Appeal No. 64 of 2010* the appeal was filed in the Land Division, Justice Percy Tuhaise, (as she then was), noted that;

200 *"Before delving into the merits of the appeal, it may be stated that this appeal should have been brought before the District Land Tribunal since the appellant filed it under section 91(10) of the Land Act. This section provides that any party aggrieved by the decision or action of the registrar under this section may appeal to the District Land Tribunal within 60 (sixty) days after the decision was communicated to the party. The challenge rightly pointed out by the appellants' Counsel however is that the Land Tribunals are no longer in existence. He cited*  
205 *the case of Sebirumbi Kisizingo -v- The Commissioner Land Registration & Another, Civil Appeal No. 16 of 2010 where Justice Aweri Opio faced the same*

210 *situation and held that Practice Direction No. 1 of 2006 gave courts jurisdiction in all matters which were being handled by the Land Tribunals. Counsel for the appellant also submitted that this court has jurisdiction to handle the case under Article 139 of the Constitution and section 33 of the Judicature Act. Article 139 of the Constitution gives the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or other law. Section 33 of the Judicature Act also grants powers to the High Court to grant absolutely or on such terms and conditions as it thinks fit, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. Practice Direction*

215 *No.1 of 2006 provides that following the expiry of contracts of chairpersons and members of the District Land Tribunals, magistrates' courts presided over by a Magistrate Grade 1 and above shall continue to have jurisdiction in land matters in accordance with section 95(7) of the Land Act. This Practice Direction was made to enable magistrates' courts to exercise jurisdiction in land matters until*

220 *new chairpersons and members of District Land Tribunals are appointed or otherwise. This implies that a magistrate's court presided over by a Magistrate Grade 1 and above could have entertained this matter. However, since the High Court has unlimited original jurisdiction under the Constitution and the Judicature Act, it can also entertain the same matter."*

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

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*parties and once they are heard, the Court can cancel the orders of the Commissioner Land registration if found illegal or wanting.* (I have underlined for emphasis).

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Under S. 177 of the Registration of Titles Act, it is the High Court with powers to direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest and to substitute such certificate of title or entry as the circumstances of the case require.

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S. 182 (1) of the RTA, provides that if upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any dealing registered or recorded, or to have any certificate of title or other document issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the registrar, and the registrar refuses so to do, or if the owner or proprietor is dissatisfied with any decision of the registrar upon his or her application, the owner or proprietor may require the registrar to set forth in writing under his or her hand the grounds of his or her refusal or decision, and the owner or proprietor may, if he or she thinks fit, at his or her own cost summon the registrar to appear before the High Court to substantiate and uphold those grounds.

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***Rule 7A (b) of the Judicature (Judicial Review) (Amendment) Rules, 2019, 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.***

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There is no evidence on the court record to show that the Applicant in this case sought rectification from the Commissioner or that he filed the matter before court and summoned the Respondent to show cause as required under S. 182(1) of the RTA. There is also no evidence to show that the Applicant filed an appeal against the decision of the Commissioner. Such appeal should have been filed at the Land Division of the High Court so that all parties that are likely to be affected by the decision of cancellation are heard before orders to reverse the decision of the

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Commissioner are made. This was the procedure followed in the case of ***Naku & 2 Ors –v- Commissioner Land Registration & Anor (supra)***. In my view, this is the right procedure.

270 In ***Leads Insurance Limited -v- Insurance Regulatory Authority & Another, CACA No. 237 of 2015, it was noted that;***

275 ***“The remedy by way of judicial review is not available where an alternative remedy exists. This is a preposition of great importance. Judicial review is a collateral challenge; it is not an appeal. Where Parliament has provided by statute appeal procedures, it will only be very rarely that the court will allow the collateral process of judicial review to be used to attack an appealable decision.”***

In this case, I find that the Applicant having failed to comply with S. 182(1) of the RTA, where he is required to file a case at the High Court and summon the Registrar to show cause or file an appeal so that all parties that are likely to be affected by  
280 the cancellation or change in title are heard before court makes orders for cancellation of the Commissioner’s order, he did not exhaust the available remedies under section 91 (10) of the Land Act by filing an appeal to High Court and/or S.182(1) of the RTA by summoning the Commissioner to show cause why  
285 cancellation of her orders should not be reversed and would therefore, have no remedy under Judicial Review. Therefore, this application is dismissed from court. Since the Respondent did not file a reply to the application, no order for costs is made.

I so order

**Dated, signed and delivered by mail at Kampala, this 23<sup>rd</sup> day of February, 2022**

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**Esta Nambayo**

**JUDGE**

**23<sup>rd</sup> /2/2022**