THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 209 OF 2022

BETI KAMYA TURWOMWE::APPLICANT

VERSUS

1. **ATTORNEY GENERAL**
2. **THE PUBLIC ACCOUNTS COMMITTEE- COMMISSIONS, STATUTORY AUTHORITIES AND STATE ENTERPRISES (COSASE) OF THE PARLIAMENT OF THE REPUBLIC OF UGANDA::::::::::::::::::RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under Article 42 of the Constitution, Section 33,36 and 39 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act and Rules 3, 4, 5, 6 & 7 of the Judicature (Judicial Review) Rules and Order 52 rules 1 and 3 of the Civil Procedure Rules seeking the following judicial review orders that:

1. A writ of certiorari doth issue quashing the finding (1) and recommendations (a) contained in the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Authorities and State Enterprises (PAC-COSASE) report.

2. An order of prohibition against the implementation of the findings and recommendations (a) of the impugned PAC-COSASE report.

3. A declaration that the PAC-COSASE acted ultra-vires, illegally, and biased in its proceedings and when it made the recommendations of commencing investigations against the applicant without properly evaluating evidence

and applying the principles of natural justice and therefore unfair, biased, ultra vires, null and void.

4. An order expunging the findings and recommendation in the impugned PAC-COSASE report (wholly or in part) from public records of Uganda.

5. General damages and costs of this suit.

The application was supported by the affidavit of the applicant whose grounds were briefly that:

1. The PAC-COSASE illegally and irrationally arrived at a finding and recommendation that an investigation should be instituted against the applicant.

2. The PAC-COSASE report was illegal, improper, ultra vires, and irrational in that findings and recommendations were arrived at with procedural impropriety or irrational evaluation of the evidence, facts, and law applicable.

3. The inquiry done by PAC-COSASE was irregular as the impugned expenditure was inquired into and approved by the Adhoc Committee and approved by the entire House of Parliament of Uganda.

4. That the applicant received complaints and appeals in her capacity as the Minister from several claimants seeking compensation vide various express land claims over land acquired by the government of Uganda.

5. That the applicant communicated by letter to the Minister of Finance, Planning and Economic Development requesting him to provide funds to Uganda Land Commission to enable the settlement of outstanding claims.

6. That the applicant had received a letter from Attorney General and an express Presidential directive written by the Principal Private Secretary to HE the President to expedite land compensations.

7. That in a letter dated 30/11/2020 to MOFPED asked for a supplementary budget and did not initiate any supplementary budget but rather requested the MoFPED to provide funds to the ULC to settle urgent land claims which included Presidential directives, Court Orders and claims from sick claimants who expressed urgent need for medical attention.
8. That unlike other supplementary budgets, Parliament instituted an adhoc committee to scrutinize the compensation claims wherein the committee went on the ground and visited families of claimants and its findings verified and recommended payments to a tune of 10.62 Billion.

9. That the Parliament's Adhoc Committee was appointed and mandated to inquire into the matter and its findings and report suggested and recommended that Parliament appropriates funds for the settlement of specific claimants as indicated in its report.

10. That the Adhoc committee of Parliament in the Supplementary Expenditure Schedule 4 for FY 2020/2021 considered the claims and approved payments to specific claimants and the report indeed shows that the money was authorized.

11. It would be a miscarriage of justice to cause an investigation of the applicant without an express ground and by merely contending that the applicant was investigated for 'kicking off' the supplementary expenditure process without any basis or support of evidence showing the same.

12. That the finding that the supplementary expenditure process had been "kicked off" by the applicant's letter to the Minister responsible for finance was reached irrationally without regard to the legal provisions and requirements under the law.

13. That the recommendation that the applicant should be investigated in respect of her participation in the commencement or kick off of the payment is irrational and a miscarriage of justice as it was not based on proper evaluation of the evidence and facts.

14. This application should be granted in the interest of justice.

The respondents opposed the application through an affidavit sworn by Hon. Ssenyonyi Joel Besekezi, the Chairperson of PAC-COSASE whose grounds were briefly that:

1. The application was bad in law, misconceived, frivolous and vexatious and sought to deter parliament from carrying out its constitutional oversight and accountability role against public officials.

2. The PAC-COSASE carried out its lawful constitutional function in examining the report of the Auditor General interfacing with the applicant considering the audit query regarding the applicant reviewing the applicant's submission, evaluating evidence, and making conclusions and recommendations to the House.

3. That the committee observed in agreement with the Auditor General that the process for the request for the supplementary budget was initiated by the Hon. Minister contrary to the existing laws.

4. That the Auditor General in his report on Uganda Land Commission for the Financial year 2020/2021 noted that there was doubtful payments of money for compensation of land owners and irregularity in the award of supplementary budgets UGX 10.62 Bn.

5. That the committee found that the President's directive and letter from Attorney General was supposed to be executed and implemented in

accordance with the law and did not give carte blanche for unlawful execution of directives.

6. The House considered, debated, and adopted the report of the Committee and all its findings and recommendations after a thorough analysis of the facts and law.

7. The applicant was invited in her capacity as the then Minister of Lands who participated in the process of the request for the supplementary budget and not in her individual capacity.

8. The applicant was invited and accorded a full and fair hearing and as such there was no contravention of the provisions of the constitution or the principles of natural justice.

The applicant was represented by *Counsel Airekire Arthur* and *Counsel Sseguya Paul* for the applicant while the respondents were represented by *Jeffrey Atwine Ag Commissioner Civil Litigation* and *Brian Musota (SA)* for the respondents

At the hearing, the following issues were framed for determination;

1. ***Whether the applicant raises any grounds for judicial review.***
2. ***What remedies are available?***

The parties were directed to file written submissions that were considered by this court.

Determination

Preliminary Objections and Points of law

The respondents raised a preliminary objection to the suability of the 2nd respondent. The respondents submitted that the PAC-COSASE was a non-existent legal entity and that Parliament as the legislative organ is represented by the Attorney General who is the proper respondent.

The applicant opposed this submission stating that the 2nd respondent had received allegations of misappropriation of funds against the applicant and

others, conducted proceedings, summoned witnesses, took and recorded witness testimonies and documentary evidence, allegedly conducted hearings, evaluated evidence, and made findings and recommendations before tabling their report before the August House for a decision. Counsel submitted that in so doing, PAC-COSASE exercised quasi-judicial functions which were amenable to judicial review.

I concur with counsel for the applicant. PAC-COSASE exercised quasi-judicial functions when it received allegations of misappropriation of funds against the applicant and others, conducted proceedings took evidence, and made findings and recommendations to the August House for a decision.

This court is tasked with the duty to interrogate the actions of the decision makers and give appropriate orders or satisfy itself that there was no wrongdoing on the part of Parliament. See ***Allibhai & 2 Ors v Attorney General (Miscellaneous Cause No. 70 of 2020)***

However, as noted by counsel for the respondents, the 2nd respondent is not a legal person that can sue or be sued. It suffices to sue the Attorney General without adding the 2nd respondent. The orders sought against the 2nd respondent can be executed against the 1st respondent alone.

Counsel for the respondents also raised a preliminary objection that the application was time-barred. Counsel submitted that the application was filed outside the statutory period of 3 months after the impugned decision was made.

The applicant rejected this contention submitting that the applicant had filed her application on ECCMIS on the 23rd September 2022 at 10:09 am and the notice was signed by the court on the 24th November 2022. Counsel submitted that the application was made after a period of one month and twenty days from the date when the cause of action arose and thus was within the three months prescribed by law.

I concur with counsel for the applicant that the application is not time-barred.

Whether the applicant raises any grounds for judicial review.

Irrationality

The applicant contended that PAC-COSASE made an irrational decision to investigate her for an alleged role in "kicking off" the supplementary expenditure process without any basis or support of evidence showing the same. The applicant also contended that the finding that the supplementary expenditure process had been kicked off by the letter of the applicant to the Minister responsible for finance was reached irrationally without regard to the legal provisions and requirements under the law. Further that the recommendation of the PAC-COSASE that the applicant be investigated in respect of her participation in the commencement or kick off of the payment is irrational and a miscarriage of justice as it was not based on proper evaluation of the evidence, facts and the law.

Counsel submitted that section 25 of the Public Finance Management Act, 2015 (PFMA) as amended restricted the power to propose and initiate supplementary budgets to the Minister responsible for Finance, who proposes by laying a Bill before parliament or by proceeding upon a request by an Accounting Officer to the user entity.

Counsel submitted that from the facts, the former Minister of Lands wrote a letter to the Minister of Finance to provide funds to the Uganda Land Commission (ULC) to clear various claims which had 10 been lodged in her office by various claimants, inclusive of Presidential Directives and Court Orders, all seeking compensation. That the letter was merely exhortatory to bring the plight of the claimants and the need for the responsible ministry to avail funds to ULC. That the letter did not supervene the legal requirements under S.25 of the PFMA requiring the Minister of Finance to initiate or proceed upon the request of the accounting officer.

Counsel further submitted that PFMA envisaged supplementary budgets to be initiated by the MOFPED and did not recognize any other official therefore it was irrational for PAC-COSASE to conclude that the applicant as the Minister of Lands had by way of letter initiated a supplementary budget, warranting an investigation.

Counsel for the respondents opposed the submissions stating that the conclusions and observations of the committee were made based on proper evaluation of evidence and facts before the committee. That the actions of PAC-COSASE were based on the mandate derived from the Rules of Procedure of Parliament to make any findings and recommendations that were expedient considering the circumstances of the matter under inquiry and report back to the house as per Rule 181(10).

Counsel submitted that the investigation of PAC-COSASE was reasonable and rational, in the interest of the taxpayer and the need for value for money and that any sensible person who applied their mind to the same question would have arrived at the same recommendations.

Counsel concluded that it was prudent to state that the committee could not be considered irrational in implementing their statutory duty and that from the above events, it could be proved that the law was duly observed by the committee and their actions and recommendations were all reasonable.

In rejoinder, counsel for the applicant reiterated their submissions stating that PAC-COSASE had irrationally and unconscionably exercised their mandate.

Analysis

Judicial review 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 and legislature for consistency with the Constitution.

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.

In ***Gillick vs West Norfolk and Wisbech Area Health Authority [1986] AC 112***, the Supreme Court observed that courts would intervene only if the Minister or Public authority (in this case Parliament), ***"has by issuing a policy, positively authorized***

or approved unlawful conduct by others" i.e. if it misdirects officials as to their legal obligations or directs them to do something that conflicts with their legal duties. The court's intervention is justified in those circumstances because there is a general duty on public authorities (including Parliament) not to induce violations of the law by others and thereby undermine the rule of law.

The courts in some situations have exhibited a willingness to intervene on substantive grounds only if the decision in question crosses an especially high threshold of unreasonableness. The court should be able and willing to evaluate the reasonableness of the decisions more rigorously than usual in order to uphold the rule of law. However, in exercising the powers of review, judges ought not to imagine themselves as being in the position of the competent authority when the decision was taken and then test the reasonableness of the decision against the decision they would have taken. To do that would involve the courts in a review of the merits of the decision, as if they were themselves recipients of the power.

Mubiru J, in ***Registered Trustees of Ker Bwobo Land Development Trust v Nwoya District Land Board (Miscellaneous Civil Application No. 13 of 2018) [2019] UGHCCD 155 (30 May 2019***) held that;

To justify interference by court without delving in the merits, the decision in question must be so grossly unreasonable that no reasonable authority, addressing itself to the facts and the law would have arrived at such a decision. In other words such a decision must be deemed to be so outrageous in defiance of logic or acceptable moral standards that no sensible person applying his mind to the question to be decided would have arrived at it.

Judicial review of the decision's reasonableness is limited to the questions of whether the challenged determination was arbitrary and capricious, irrational, made in bad faith, or contrary to a Constitutional provision or a statute. Such reviews were only limited to an exceptional class of case in which public agency stepped outside the range of reasonable decision making. A reasoning or decision is unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (see Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223). The test is stricter than merely showing that the decision was unreasonable.

In the case of ***Council of Civil Service Union vs. Minister for Civil Service [1985] AC 374 ALL ER 935. Diplock J stated thus;***

"***By 'irrationality', I mean what can now be succinctly referred to as 'Wednesbury's unreasonableness'...It applies to a decision which is so outrageous in defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. Whether the decision falls within this category is a question judges by their training and experience should be well equipped to answer, or else there would be something wrong with our judicial system.***"

To determine this ground, it is therefore important to assess and analyze whether in arriving at the decision, the body acted in a way so outrageous that it defeated any logic. Wednesbury unreasonableness is associated with extreme behavior.

It is argued by counsel for the applicant that the finding that the supplementary expenditure process had been kicked off by the letter of the applicant to the Minister responsible for finance was reached irrationally without regard to the legal provisions and requirements under the law.

On the other hand, counsel for the respondents argued that PAC-COSASE had acted within its mandate derived from the Parliament's Rules of Procedure. The applicant was the then Minister of Lands when a supplementary budget was passed to pay aggrieved land owners. The Auditor General made a report in regard to this event that caused the Ministry of Lands to be investigated by the August House. A committee was appointed to make investigations, findings and report back to the House.

As the then Minister of Lands, it was reasonable for COSASE to investigate the applicant. The applicant was directly involved in triggering the events that resulted into the impugned supplementary budget. It was not irrational to investigate the extent to which the applicant caused the supplementary budget to be passed. But rather the decision reached by the committee is what is challenged for irrationality since the evidence on record shows that she was right and justified to request for a supplementary funding from MoFPED.

The applicant as the Minister responsible wrote the Ministry of Finance upon a Presidential directive and later Attorney General to request for compensation of the claimants. That the applicant had received a letter from Attorney General and an express Presidential directive written by the Principal Private Secretary to HE the President to expedite land compensations. The Minister's role stopped at the request for supplementary funding for claimants and the rest was up to the concerned Ministry mandated under the law. The same process could have stopped at mere letter if at all the responsible Ministry officials found it baseless or devoid of any merit.

In addition the Parliament interested itself in the applicant's request and appointed an adhoc committee which confirmed that indeed the funds requested by the applicant and was later were included in the supplementary budget were justified by visiting the families of claimants and its findings verified and recommended payments to a tune of 10.62 Billion.

The evidence on record clearly shows that the applicant did not do anything wrong in writing a letter to request for the payment of claimants which was later included in the supplementary budget and it is indeed the procedure required of every agency or ministry which would require extra funds outside the budget. The decision of the committee seems to criminalize or blame any agency which requests for a supplementary funding which in my view would be very outrageous and defiance of logic and established principles of good governance and rule of law. How else would a supplementary budget be generated if the money is not requested by the responsible MDAs?

Secondly, the applicant's request for funding/compensation of claimants and later supplementary budget was automatically taken over by Parliament which cleared the payment of the claimants. The report of the Adhoc Committee on Land Compensations in the Supplementary Expenditure Schedule No. 4 for Financial Year 2020/2021 dated May, 2021 clearly in conclusion noted as follows; ***"In the meantime, supplementary Expenditure request contained in Schedule No. 4 of FY 2020/21: Vote 12-Ministry of Lands, Housing and Urban Development; and Vote 156-Uganda Land Commission be approved"***

Therefore, the recommendation to investigate the applicant would by implication also mean that the entire process involving the Parliamentary Adhoc Committee should be investigated since they also approved the supplementary expenditure. The decision to make the recommendation against the applicant is not supported by evidence on record which points to a contrary view of what happened in the entire process of approving the supplementary budget.

Any decision made by a public body can be challenged if it is repugnant to reason. It is not for the court to decide what is reasonable and what is unreasonable. The test of reasonableness is not what the court thinks is reasonable, but 'unreasonable' is something so absurd that no reasonable or sensible person could come to that decision. It is quite possible that two reasonable persons may come to opposite conclusions on the same facts without being regarded unreasonable.

The wide constitutional powers exercisable under the doctrine of separation of powers must be exercised with circumspection since they have far reaching consequences and repercussions on any individual and other arms of government like the Executive and there is inherent limitation in its exercise when making recommendations which may become unenforceable or create hardship in implementation. A decision is irrational in the strict sense of that term if it is unreasoned; if it is lacking ostensible logic or comprehensible justification like in this case.

The committees finding which resulted in making the recommendation to investigate the applicant is not supported by the whole evidence which was available on record and is not capable of reasonably supporting the finding of fact. Therefore, a material mistake or disregard of a material fact in and of itself renders a decision irrational and unreasonable. A decision or finding or recommendation may be quashed for material error of fact in the reasoning process. See ***R (on the application of March) v Secretary of State for Health [2010] EWHC 765 (Admin); Med.L.R 271, R v (on application of MD (Gambia)) v Secretary of State for the Home Department [2011] EWCA Civ 121***

This court therefore finds that the applicant was not responsible for the supplementary budget or 'kick starting' of the supplementary budget and therefore the recommendation to investigate the applicant is irrational simply because she requested for payment of claimants outside the budget-which later has now been termed as a 'kicked off' of the supplementary budget process which was investigated by the same Parliament and approved of it and the whole process approval of the entire house.

Procedural impropriety

Counsel also contended that the inquiry by a parliamentary committee for expenditures that were approved by the parliamentary ad-hoc Committee contravened the rules of natural justice as it was improper for a committee constituted by parliament to purport to take part in an inquiry that questioned those same expenditures that had been approved by the same parliament's ad-hoc committee.

Counsel for the respondents rejected this argument. Counsel submitted that the committee had conducted the investigation within the procedures laid down in the Constitution and the Rules of Procedure of Parliament. Counsel submitted that the applicant was accorded a hearing when she was invited and accorded a full and fair hearing as the then Minister of Lands and not in her individual capacity thus there was no contravention of the provisions of the Constitution or the principles of natural justice.

In rejoinder, counsel submitted that the applicant was never formally notified of the allegations leveraged against her, that she was never informed of the members constituent of the committee that she was going to appear before, she was never given sufficient time to prepare her defense, she was never given an opportunity to cross-examine some witnesses who testified against her, there was no proof of any hearing presented by the respondents apart from merely alleging so. Counsel cited Sections 101 and 102 of the Evidence Act and submitted that the respondents had not attached evidence of the alleged hearing. Counsel concluded that the respondents had not followed the right procedure during their alleged hearing of the applicant's case thus the report of the PAC-COSASE,

investigations, hearings, findings, and recommendations were conducted in total violation of the principles of natural justice with procedural impropriety and ultra vires.

Analysis

According to **Article 24 of The Constitution of the Republic of Uganda, 1995** as amended, persons appearing before any administrative official or body have a right to be treated justly and fairly.

The essence of fairness is good conscience in a given situation ***(see Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, 1978 AIR 851, 1978 SCR (3) 272)***. Fairness has also been described as "openness, or transparency in the making of administrative decisions" ***See Doody v. Secretary of State for the Home Department [1993] 3 All E.R. 92.***

The PAC-COSASE in the exercise of its mandate received and relied on the Auditor General's report into the supplementary budget of UGX 10 billion for compensation of land owners. The committee concurred with the report and made findings of its own as well. The committee had a duty to investigate the irregularities (if any) of the budget. The applicant was investigated as the then Minister of Lands and not in her personal capacity. She was also the then overseer of the Uganda Land Commission.

The applicant was accorded a hearing according to her own evidence but was unfortunately not convinced of its fairness. She was invited for a hearing and was heard by the committee. The applicant's contention that this was not a fair hearing was based on the fact that she was not given formal notice of the allegations against her, allowed time to prepare her defense to the allegations, and allowed to cross-examine some of the witnesses.

However, in cases like this what is required for the respondent to meet the duty to treat the applicant justly and fairly in a process of investigation, is to have done its best to act justly, and to reach just ends by just means, i.e. acting honestly and by honest means. The nature of this standard was explained in De Verteuil v. Knaggs and Another [1918] A.C. 557, as "a duty of giving to any person against

whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

The applicant in as far as being heard and treated fairly, the PAC COSASE, acted fairly and observed the principles of natural justice or fairness in regard to the proceedings and investigations.

Bias

Counsel further submitted that the 2nd respondent was biased towards the applicant in its investigation leading to the impugned report. The 2nd respondent's observation that the process for a request for the supplementary budget was initiated by the then Minister of Lands contrary to the existing laws was unfairly prejudicial and amounted to bias since the same was made without clearly evaluating the evidence, facts and law before making such observation.

The applicant contended that PAC-COSASE did not approach the issues raised in the auditor's report with an open mind. Given the committee's over reliance on the findings in the auditor's report and report of the ad-hoc committee of parliament, the 2nd respondent approached the issues with a closed mind or had prejudged the matter.

Counsel submitted that the committee could not approach the allegations concerning the applicant with impartiality since they were in the same Parliament where the adhoc committee tabled its report and the same was discussed and adopted by Parliament which constituted members of the PAC-COSASE.

Counsel submitted that the investigations, findings, and recommendations of the 2nd respondent as far as they related to the applicant were tainted with bias since they were mainly based on the findings in the reports of the Auditor General and the Ad-hoc committee of parliament.

In response, counsel for the respondents submitted that the submissions of the applicant were mere conjecture and suppositions that can't amount to bias.

Counsel cited the case of ***Ojenjbede vs Esan & Anor 8NSCR 461*** at page 471; for cases involving allegations of bias or real likelihood of bias;

"there must be cogent and reasonable evidence to satisfy the court there was in fact such bias or real likelihood of bias as alleged. In this regard, it has been said and quite rightly too that mere vague suspicion of whimsical and unreasonable people should not be made a standard to constitute proof of such serious complaints."

Counsel submitted that the scope of the investigation by the ad-hoc committee and the terms of reference were limited to verification of the alleged beneficiaries of the supplementary budget for compensation. The investigation by PAC-COSASE was for the purpose of ensuring accountability for UGX 10 billion.

Counsel submitted that there was nothing in the rules of procedure and parliamentary practice that barred parliament from reconsidering a matter it has handled before by the previous parliament. The observations, findings, and recommendations of PAC-COSASE were based on proper evaluation of the report of the Auditor General and evidence submitted by the applicant.

Analysis

The applicant did not prove any ill or ulterior motives by PAC COSASE. The committee had a duty to investigate the irregularities of the supplementary budget where the applicant actively played a role as the then Minister of Lands. The committee rightly relied on the Auditor General's report that informed the house of these irregularities. Bias cannot be imputed on the mere statement that the committee investigated the applicant in a closed-minded manner.

The applicant's allegation that the same members of parliament were part of the ad-hoc committee where the report was tabled, discussed, and adopted by parliament also constituted members of the PAC-COSASE is quite a stretch. The two committees were constituted to handle different issues regarding the impugned supplementary budget. This also did not impute bias against the applicant. Parliament regulates its procedure and any person who sits on any committee should not or never be stopped from further involvement in a matter

they may have investigated as this would impede on their general duty as enshrined in the Constitution as representatives of certain constituencies within the whole Parliament.

Illegality

The applicant also contended that PAC-COSASE acted illegally when it only made reference to the report of the Auditor General, the report of the ad-hoc committee, and made findings and recommendations without properly evaluating the evidence and facts.

Counsel for the applicant submitted that the respondent illegally ignored the provisions of the Public Finance Management Act, 2015 while making findings and observations that the letter of the former Minister of Lands had initiated the supplementary expenditure process. Had the committee of PAC-COSASE it would not have made the recommendations it did make against the applicant in its report.

Counsel reiterated their submissions that the 2nd respondent had failed to conduct a hearing of the allegations made against the applicant, never offered the applicant to prepare her defense, and some witnesses made allegations against the applicant but she was never given an opportunity to cross-examine them contrary to the provisions of Articles 28 and 42 of the constitution of the Republic of Uganda, 1995 as amended.

Counsel concluded that the 2nd respondent had illegally and unlawfully made findings and recommendations in its report without affording the applicant an opportunity to defend herself as required by Articles 28 and 42 of the Constitution.

Counsel for the respondent on the other hand submitted that committees of parliament were empowered by the Constitution of the Republic of Uganda to call upon any person to submit memoranda or appear before them to give evidence. In the exercise of the above mandate, parliament received and referred to PAC COSASE the report of the Auditor General on Uganda Land Commission for the Financial Year 2020/2021.

Counsel submitted that the applicant was the then Minister responsible for Lands and super seer of the Uganda Land Commission. The report of the Auditor General implicated the applicant in the payment of the UGX 10 billion supplementary budget for compensation of land owners. The committee concurred with the audit report after a thorough examination and evaluation of evidence and came up with concrete observations and recommendations to the House.

It was counsel's submission therefore that the PAC COCASE exercised powers vested in it by the Constitution and the Rules of Procedure of Parliament and that its findings and recommendations were lawful and as such the application should fail on this ground.

Counsel for the applicant rejoined stating that the report of the Auditor General did not implicate the applicant in the irregular award of the supplementary budget. Counsel submitted that had PAC-COSASE properly evaluated the facts and the law, documentary, and oral evidence presented to it, it would not have made the impugned findings that the letter of the then Minister of Lands initiated or kicked off the supplementary expenditure process.

Counsel reiterated their submissions that had the 2nd respondent considered sections 25 and 28 of the Public Finance Management Act, 2015 it would not have erroneously come to that finding.

Analysis

Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality.

The applicant contends illegality on grounds that PAC-COSASE did not properly and legally evaluate the evidence and the facts presented and that she was not given a fair hearing. As already resolved ahead, PAC-COSASE had the mandate to investigate the irregular supplementary budget. This mandate was exercised legally and the applicant was duly accorded a chance to be heard. PAC-COSASE

was merely following the evidence on record to investigate the circumstances surrounding the impugned payments that the applicant actively participated in.

Illegality strictly connotes to lack of authority to do what a public body is supposed to do. The applicant's counsel should not confuse arriving at unreasonable or irrational decision for illegality. Whatever the 2nd respondent did was in accordance with the law and mandate of Parliament and this ground of illegality is baseless and devoid of merit.

What remedies are available?

The court issues an order of Certiorari quashing recommendation (1) of the report*; "Hon. Beti Namisango Kamya Turwomwe, former Minister of Lands, Housing and Urban Development should be investigated in respect to her participation in the commencement of the 10.6 billion payments."* The same was reached through a flawed analysis and evaluation of evidence that she 'kicked off' the supplementary budget process which is the sole mandate and discretion of the Ministry of Finance, Planning and Economic Development.

This application only succeeds on this ground and I make no order as to costs.

I so order.

SSEKAANA MUSA
JUDGE
31st May 2023.