

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MFIGI
MISCELLANEOUS CAUSE NO. 006 OF 2023**

MUKIMBIRI RONALD.....APPLICANT

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VERSUS

1. COMMISSIONER LAND REGISTRATION

2. KASIBANTE JOSEPH

3. NAMAGEMBE MARGRET

4. NANYONYI DOROTHY

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5. PETER MAJWEGA

.....**RESPONDENTS**

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK

RULING

Brief facts:

15 The applicant brought the instant application by way of Notice of Motion under
Section 98 of the Civil Procedure Act, **Section 36 (1) (a), (b), (c) and (e), (2), (3),**
(4), (5) and (7), Section 38 of the Judicature Act, as amended, **Rules 3(1), (2), (4),**
and **(6)** of the Judicature (Judicial Review)(Amendment) Rules 2019 against the
20 respondent seeking that the decision of the 1st Respondent dated 27/7/2022
cancelling the title to land comprised and known as Gomba Block 343, Plot 15
situate at Lwaweba, Busonga, Nakaseta, Gomba District in the names of Mukimbiri
Ronald be called and quashed, for having faulted the procedures laid down by the
law; a prerogative order of prohibition doth issue against the 1st respondent
restraining him from implementing the impugned findings of the 1st respondent
25 and costs of the application.

The 2nd – 5th respondents applied to court to be added as respondents in this suit
which application was granted by Court on 24th January, 2023.

The application was supported by an affidavit sworn by the applicant whose
grounds I will not reproduce.

30 The application was opposed through affidavits in reply sworn by Mr. Golooba
Haruna, Senior Registrar of Titles working with the 1st respondent and the 2nd
respondent, who asserted that the application is improper, incompetent,



misconceived and an abuse of court process and does not warrant and/or call for judicial review, since all the correct procedures were followed prior to cancelling the applicant's name from the Certificate of Title to the suit land.

5 Further, that Judicial Review is only available where the statutes do not provide for any other remedy to the aggrieved party and that the applicant did not exhaust the existing remedies available within the public body or under the law before filing this application for Judicial Review and that any person aggrieved with the decision of the 1st respondent should have appealed to the High Court and notified all the parties involved, which the applicant failed to do, but fortunately the 2nd – 10 5th respondents were added to this application.

At the commencement of hearing of the application counsel for the respondents intimated to court that they intended to raise preliminary objections that would dispose of the case.

Representation:

15 Mr. David Kaggwa appeared for the applicant while Mr. Sekito Moses appeared for the 1st respondent and Mr. Peter Nsbambi appeared for 2nd, 3rd, 4th, and 5th respondents. All parties filed written submissions.


Issues:

- 20 1. Whether the Applicant exhausted all the remedies under the law before instituting an application for Judicial Review? Or whether the applicant has a remedy under Judicial Review?
2. Whether the applicant is entitled to the remedies sought in this application?

Submissions:

25 **Issue 1: Whether the Applicant exhausted all the remedies under the law before instituting an application for Judicial Review? Or whether the applicant has a remedy under Judicial Review?**

Counsel for the respondents submitted that the 1st respondent exercised his powers as conferred upon him under **Section 91(1)** of the Land Act and cancelled the applicant's name from the Certificate of Title of the suit land. The applicant being 30 dissatisfied filed an application for Judicial Review instead of appealing the said decision as provided under **Section 91 (10)** of the Land Act. Counsel relied on the case of **C.R Patel v. The Commissioner Land Registration & 2 Others, C.S No. 87 of 2009** which was cited with approval in the case of **Mohammed Magezi v. Commissioner Land Registration, Miscellaneous Cause No. 172 of 2017** where it 35 was held that;



5 *“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 the persons who could be affected by the decision of the Court, on appeal. They have to be parties and once they are heard, the court can cancel the orders of the Commissioner Land Registration if found illegal or wanting.”*

10 Counsel submitted that the remedy that was available to the applicant in this case was to appeal to the High Court under **Section 91 (10)** of the Land Act and notify all the parties likely to be affected by the decision of cancellation to be heard before orders to reverse the decision of the Commissioner is made and not to proceed by Judicial Review.

15 Further, that **Rule 7A (b)** of the Judicature (Judicial Review) (Amendment) Rules 2019, provides that;

“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.”

20 That the applicant in the instant case did not exhaust the existing remedies available within the public body or under the law, which was to appeal. Counsel relied on the case of **Leads Insurance Ltd v. Insurance Regulatory Authority & Another, C.A.C.A No. 237 of 2015** to support his argument.

25 Counsel concluded that the applicant in his application raised issues of fraud which an application of this nature where evidence is given by way of affidavit cannot deal with since fraud must be specifically pleaded and proved before court.

30 Counsel for the applicant on the other hand defined Judicial Review as provided under **Rule 3** of the Judicature (Judicial Review) (Amendment) Rules, 2019 and cited the cases of **Muhumuza Ben v. Attorney General of Uganda and 2 Others, Miscellaneous Cause No 212 of 2020** and **Baligobye & 2 Others v. Attorney General and 3 Others, Miscellaneous Cause No. 379 of 2019** which laid down the grounds for Judicial Review. That in the instant case the applicant was never notified of the proceedings by the 1st respondent and therefore was never given a chance to be heard thus the proceedings were illegal, irrational, and biased consistent with procedural impropriety. That the proceedings were against the applicants right to a fair hearing contrary to **Articles 28 (1) and 42** of the Constitution of the Republic of Uganda, 1995. Counsel relied on the case of **Ridge v. Baldwin [1963] A.C 40 [1963] ALL ER 66**, where it was stated that a decision


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reached by an administrative body in disregard of the principles of fair hearing or natural justice is null and void. And prayed that this court finds the decision of the 1st respondent as null and void.

5 Counsel for the applicant also submitted that **Rule 7A (b)** of the Judicature (Judicial Review) (Amendment) Rules, 2019 and **Section 91(10)** of the Land Act provide that an appeal be made to the land Tribunal and that according to the Practice Direction No. 1 of 2006, this would be the Magistrate's court and not the High Court.

10 Counsel added that wherever a decision in issue is challenged on the basis of the same being illegal or irrational and, or found of procedural impropriety, it would be prudent to subject it to judicial review regardless of the existence of an alternative remedy. Counsel cited the case of **Leads Insurance Limited v. Insurance Regulatory Authority & Another, C.A.C.A No. 237 of 2015** cited with approval in the case of **John Ssentongo v. The Commissioner Land Registration and 4 others, H.C.M.C No. 13 of 2019**, where court found that if the applicant is to satisfy the court to entertain judicial review in the presence of an alternative remedy, the applicant has to show exceptional circumstances or some other ground why it is inappropriate for the matter to be dealt with by the alternative forum.

20 Further, that in the instant case the refusal of the 1st respondent to summon the applicant for the hearing, his refusal to notify him of the nature of the complaint brought against him by the complainants, his refusal to give the applicant a chance to prepare his defence and probably, to hire the services of a lawyer if he needed one, his refusal to hear the applicant, making the impugned decision against the applicant in disregard of the rules of natural justice and the fact that the decision against him was based on a consent judgment to which neither himself nor his vendor were parties amount to the would be exceptional circumstances rendering this matter amenable to judicial review. (**See: John Ssentongo v. The Commissioner Land Registration and 4 others, (Supra)**).

30 Counsel for the respondents in rejoinder submitted that **Section 91 (10)** of the Land Act gives an aggrieved party an avenue through which to seek a remedy and this is by appeal to the District Land Tribunal. That is trite that an appeal is a creature of statute and that as per the case of **Sebirumbi Kisizingo v. The Commissioner Land Registration & Another, Civil Appeal No. 16 of 2016**, it was held that; Practice Direction No. 1 of 2006 gave Courts jurisdiction in all matters which were being
35 handled by the Land Tribunals. That in the instant case judicial review is not available to the applicant since the Land Act is very specific and the applicant has not shown any exceptional circumstances or other grounds why it is inappropriate for the matter to be dealt with in an alternative forum. 

Analysis of court:

Judicial Review is defined under **Rule 2** of the Judicature (Judicial Review) (Amendment) Rules, 2019 to mean; 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.

According to the **Black's Law Dictionary at page 852**, Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional.

The applicant in the instant case claims that the law was not followed when the 1st respondent made his decision to cancel the Certificate of Title to which he is the registered proprietor and in the circumstances this application is one suitable for Judicial Review. The applicant submitted that he was not notified about the intention to cancel the Certificate of Title therefore he was not given a fair hearing meaning that the decision made by the 1st Respondent was illegal, irrational and he acted with procedural impropriety. Hence, the actions of the 1st respondent were ultra vires.

The respondents on the other hand contended that the 1st respondent did follow the due process in reaching its decision while exercising its mandate under **Section 91(1)** of the Land Act. That in the circumstances the applicant should have applied for an appeal under **Section 91(10)** of the Land Act which he did not do.

Section 91(1) of the Land Act provides as follows;

"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."

The above Section gives the 1st respondent the mandate to cancel or take any appropriate action in instances where a Certificate of Title; (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; (e) is illegally or wrongfully obtained; or (f) is illegally or wrongfully retained upon issuing notice to the concerned parties. (See: **Section 91 (2) of the Land Act**).

I have carefully considered the application and the affidavits for and against it with the annexures attached thereon and submissions from both sides.



The applicant in the instant case averred that no notice was issued to him about the intention to cancel the Certificate of Title by the 1st respondent. However, according to paragraph 13 of the 1st respondent's affidavit in reply, it is stated that before the cancellation of the Applicant's Certificate of Title, the Office of the 1st Respondent on 25th May, 2022 issued a Notice of intention to effect changes in the Register to all the concerned parties including the applicant herein for a public hearing scheduled for the 24th June, 2022 at 10:00am.

According to Paragraph 14 of the same affidavit, it is stated that the Notice of intention to effect changes was duly served unto the applicant through his registered mail address.

The 1st respondent further stated that the applicant even attended the public hearing and the parties agreed that after subdivision of Plot 1 as per the consent Order, it was only Plot 15 that was erroneously transferred to the applicant instead of the rightful beneficiaries.

The 1st Respondent went ahead and attached annextures to prove that indeed the applicant was notified, served and he even was present as he signed on the attendance list. This was evidence by Annextures marked "C", "D" and "E" respectively. The applicant was in attendance and signed on the attendance list as No. 10.

It is trite that judicial review is concerned not with the decision per se, but with the decision making process.

Rule 7A (b) of the Judicature (Judicial Review) (Amendment) Rules 2019, provides that;

"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."

In the instant case the applicant was notified and even attended the public hearing, the procedure as provided under **Section 91 (2), (2a), (2b)** of the Land Act was followed by the 1st respondent. The applicant was accorded a fair hearing and the 1st respondent rightly exercised its mandate under **Section 91 (1)** of the Land Act.

Therefore, in the circumstances if the applicant was dissatisfied with the decision of the 1st Respondent the remedy available to him was to appeal as provided under **Section 91(10)** of the Land Act which 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."

The applicant however, chose to apply to this Court for Judicial Review. In the cases of **Fuelex Uganda Limited v. The Attorney General & 2 Others, Misc. Cause No. 048 of 2014**, while relying on the case of **R v. Chief Constable of Merseyside Police Ex-parte Calveby & Others [1986] 1 ALL ER 257 at 263**, and **Preston Vs IRC [1955] 2 ALL ER 327 at 330** quoted with approval in **Micro Care Insurance Limited Vs Uganda Insurance Commission Misc. Application No. 0218 of 2009**, where it was stated that; a remedy by way of judicial review was not available where an alternative remedy existed and that where parliament had provided appeal procedures, as in a taxing statute, it would only be very rarely that the court will allow a collateral process of judicial review to be used to attack an appealable decision.

In the instant case the applicant had an alternative avenue of appealing to the Land Tribunal as provided under **Section 91(10)** of the Land Act and as per the case of **Sebirumbi Kisizingo v. The Commissioner Land Registration & Another, Civil Appeal No. 16 of 2016**, it was held that; Practice Direction No. 1 of 2006 gave Courts jurisdiction in all matters which were being handled by the Land Tribunals. The applicant therefore had the option of appealing in the Magistrate's court which he did not do but instead chose to file an application for Judicial Review in this court.

I agree with the submissions of the respondents that the applicant has not shown any exceptional circumstances as to why his application should be granted with Judicial Review remedies as opposed to having explored the alternative remedy as provided for under the law. Whereas, I agree with the findings in the case of **John Ssentongo v. The Commissioner Land Registration and 4 others, (Supra)** as extensively relied on by the applicant, the facts of that authority are distinguishable from those in the instant case. The applicant in the instant case is being dishonest and lying to court that he was not accorded a fair hearing in contravention of the rules of Natural justice which is not true. The decision as reached by the 1st respondent was not ultra vires since due process was followed as laid down under **Section 91(1), (2), (2a), (2b)** of the Land Act before the applicant's name was cancelled off the Certificate of Title where he was the registered proprietor.

I therefore, find and hold that the applicant did not exhaust the available remedies under the law before filing the instant application. The applicant did not prove to this court any exceptional circumstances that would allow this court hear this application on judicial review as opposed to him having proceeded by way of appeal as provided under **Section 91(10)** of the Land Act.



I associate myself with the holding in the case of **Leads Insurance Limited v. Insurance Regulatory Authority & Another, (supra)** as cited by both parties where it was stated that;

5 *“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
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
10 appealable decision. (See: Breston v. IRS 1985 Vol. 2 ... Land Reports pg
327 at page 330 per Lord Scarman).”*

In the same case it was stated that;

15 *“To find that if he applicant is to satisfy the court to entertain the judicial
review the presence of an alternative remedy, the applicant has to show
some exceptional circumstances or some other ground why it is
inappropriate for the matter to be dealt with by the alternative forum.”*

The applicant in the instant case being dissatisfied with the decision of the 1st respondent should have followed the procedure provided under **Section 91(10)** of the Land Act and filed an appeal in the Magistrate’s Court since he does not fall under the exceptional circumstances that would otherwise qualify his application to be eligible for an award of Judicial Review Remedies.

This issue is hereby resolved in the negative.

Issue 2: Whether the applicant is entitled to the remedies sought in this application?

25 Counsel for the respondents submitted that the applicant having failed to comply with **Section 91 (10)** of the Land Act by filing an appeal to the High Court has no remedy under Judicial Review and as such the application should be dismissed with costs to the respondents.

30 Counsel for the applicant on the other hand submitted that the applicant properly brought the instant application before this court and it should be allowed and costs awarded to him.

35 The applicant in the instant case has failed to prove to this court that indeed the 1st respondent failed to exercise his duty as provided under **Section 91(1)** of the Land Act. On the contrary this court has found that the 1st respondent diligently exercised its duty as provided under **Section 91(1)** of the Land Act which the applicant was even a part of as evidenced by the attendance list marked as Annexure “E” as attached to the 1st respondent’s affidavit in reply.

I accordingly find and hold that the applicant is not entitled to the remedies as prayed for. This issue is also resolved in the negative.

I hereby uphold the preliminary objections as raised by the respondents.

5 The main application is found to be an abuse of court process, incompetent and improperly filed before this court.

The application is hereby dismissed with costs.

I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

12/05/2023

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