

MISCELLEANEOUS CAUSE NO. 0259 OF 2022

2. NELSON YIGA :::::::::::::::::::: APPLICANTS

THE COMMISSIONER LAND REGISTRATION ::::::::::::::: RESPONDENT

Introduction

- a) An Order of Certiorari doth issue quashing the decision of the Respondent to cancel the Applicants' certificate of title for land comprised in Kyaggwe Block 80 Plots 2010 and 2011 situate at Dundu, Buntaba & Kiryamuli (hereinafter referred to as the **“suit land”**).
- b) A declaration doth issue that the Respondent acted irregularly, unlawfully and illegally in making the decision or order to cancel the certificates of title for the suit land and that the decision was ultra vires the Respondent's powers.
- c) A declaration doth issue that the process and act of the Respondent lodging and registering a caveat on the certificate of title for the land comprised in Kyaggwe Block 80 Plot 2011 vide Instrument No. MKO-00116512 was ultravires and in violation of powers under Section 170(a) of the Registration of Titles Act Cap. 230, irregular and improper.
- d) An order of Prohibition doth issue restraining the Respondent, or her agents from implementing the decision/order to cancel the Applicants'

certificate of title for the suit land comprised in Kyaggwe Block 80 Plot 2010 situate at Dundu, Buntaba & Kiryamuli.

- e) An order of mandamus doth issue compelling the Respondent to register the Applicants' names on the certificate of title for Kyaggwe Block 80 Plot 2011 situate at Dundu, Buntaba & Kiryamuli subject to payment of requisite fees and registration processes.
- f) An injunction doth issue restraining the Respondent from registering any instrument adversely affecting the Applicant's interest and or proprietorship over the suit properties comprised in Kyaggwe Block 80 Plot 2010 and Plot 11 situate at Dundu, Buntaba & Kiryamuli.
- g) An order doth issue directing the Respondent to maintain and or restore the Applicants on the certificate of title for land comprised in Kyaggwe Block 80 Plot 2010.
- h) The Respondent pays general damages to the Applicants.
- i) Provision be made for costs of the application.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit in support and in a supplementary affidavit deposed by **Yiga Nelson**, the 2nd Applicant. Briefly, the grounds are that the two Applicants are co-registered proprietors of land comprised in Kyaggwe Block 80 Plot 2010 and are purchasers and equitable owners of Kyaggwe Block 80 Plot 2011 situate at Dundu, Buntaba & Kiryamuli (jointly referred to as the suit land). The Applicants purchased the suit land from a one Niyonzima Simon Mabbe after conducting searches in the land registry on 30/11/2021 and 05/07/2022 respectively which revealed that the land was in the vendor's names with no encumbrances whatsoever. The Applicants immediately took vacant possession and no adverse claims on the land existed. However, sometime in September 2022, the deponent came across and learnt from the New Vision Newspaper dated 01/09/2022 that the Respondent had issued a notice for a public hearing over an intended

amendment of the register for land comprised in Kyaggwe Block 80 Plot 2010. The notice was not addressed to the Applicants as registered proprietors of Plot 2010 and equitable owners of Plot 2011 which prompted them to write to the Respondent protesting and complaining but no reply was made to their complaint. Nevertheless, without any invitation and under protest, the Applicants showed up for the intended public hearing on 22nd September 2022, presented to the Respondent the duplicate certificates of title for the suit land and informed the Respondent that they were bonafide purchasers of the land and were in actual possession of both plots which are adjacent to each other.

[3] The deponent further stated that upon making further follow up at the land Office, they discovered that without any public hearing, the Respondent had issued an amendment order and notices of cancellation of the certificate of title for the suit land. The Applicants, through their lawyers, wrote to the Respondent protesting the cancellation of the certificates of title and demanding a recall or withdrawal of the said Amendment Order but no reply was offered by the Respondent. The deponent stated that the Applicants challenge the decision of the Respondent on grounds that the purported reason for cancellation of the said titles would, if correct, amount to a fraudulent creation of the white page from the blue page by third parties; that as bona fide purchasers for value of the said land, their interest in the land could only be cancelled for fraud proved in court and not by the Respondent under Section 91 of the Land Act; that the amendment order affects the title for the land comprised in Kyaggwe Block 80 Plot 201I which was not indicated as a subject of the intended public hearing; that no public hearing was conducted prior to the cancellation order; that the Applicants are not aware of any illegality, irregularity or error in respect of creation or acquisition of the certificates of title for suit land; and that the Respondent acted ultra vires, illegally, irregularly and with material impropriety in ordering cancellation of the

certificate of title. The deponent concluded that it is just and equitable that the Court grants the application.

[4] The Respondent did not file an affidavit in reply to the application despite sufficient evidence of service of process. The application, therefore, remained unopposed.

Representation and Hearing

[5] At the hearing, the Applicants were represented by **Mr. Ola Gabriel** who appeared on brief for **Mr. Ambrose Tebyasa**. The Respondent still made no appearance and the hearing proceeded ex parte pursuant to the provision under Order 9 rule 20(1)(a) of the CPR upon sufficient proof of service. The hearing proceeded by way of written submissions which were duly filed by Counsel for the Applicant and have been taken into consideration in the course of determination of this matter.

Issues for determination by the court

[6] Three issues are up for determination by the court, namely;

- a) Whether the application is amenable for judicial review?**
- b) Whether the application discloses any grounds for judicial review?**
- c) Whether the Applicants are entitled to the reliefs sought?**

Resolution of the Issues by the Court

Issue 1: Whether the application is amenable for judicial review?

Submissions by Counsel for the Applicants

[7] Counsel for the Applicants relied on the provisions under Articles 42 and 44(c) of the Constitution of the Republic of Uganda, and Section 36 of the Judicature Act to submit that the Applicant is entitled to and the High Court has powers to grant the reliefs sought by the Applicants through an application for judicial review. Counsel stated that under Rule 7A of the Judicature

(Judicial Review) (Amendment) Rules 2019, when considering an application for judicial review, the Court must satisfy itself that the application is amenable for judicial review, that the aggrieved person has exhausted the existing remedies available within the public body or under the law, and that the matter involves an administrative public body or official.

[8] Counsel submitted that the Respondent is an administrative official in government service established under the Registration of Titles Act Cap. 230 and is entrusted with the management of matters of land registration; which makes the actions taken and the decision made affecting the Applicants in respect to the suit property subject to judicial review by this Court. Counsel stated that the subject matter of the current application is the propriety and legality of the process and decision made by the Respondent by way of an amendment order on 29th September 2022 with the effect of cancelling the Applicants' certificate of title for the suit land. Counsel stated that the application has been brought within time under the law and was competently before the Court.

[9] Regarding the requirement for exhaustion of existing remedies, Counsel submitted that the Applicants had written letters to the Respondent through their lawyers complaining and protesting the intended public hearing and subsequent implementation of the impugned amendment order but never received any response. Counsel stated that the Applicants had no other alternative remedy other than bringing the present application for judicial review. Counsel prayed to Court to find that the application is amenable for judicial review.

Determination by the Court

[10] The position of the law is that judicial review is concerned not with the decision but the decision making process. Judicial review involves an

assessment of the manner in which a decision is made. It is not an appeal and 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. See: *Attorney General v Yustus Tinkasimmire & Others*, CACA No. 208 of 2013 and *Kuluo Joseph Andrew & Ors v Attorney General & Others*, HC MC No. 106 of 2010.

[11] The *Judicature (Judicial Review) (Amendment) Rules 2019*, sets out the factors to be considered by the Court when handling applications for judicial review. Rule 7A provides that;

(1) *The court shall, in considering an application for judicial review, satisfy itself of the following –*

(a) That the application is amenable for judicial review;

(b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and

(c) That the matter involves an administrative public body or official.

[12] As a matter of law, for a matter to be amenable for judicial review, it must involve a public body in a public law matter. Two requirements, therefore, need to be satisfied; first, the body under challenge must be a public body whose activities can be controlled by judicial review; and secondly, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights. See: **Ssekaana Musa, Public Law in East Africa, (2009) Law Africa Publishing, Nairobi, at Pg. 37.** In *Arua Kubala Park Operators and Market Vendors' Cooperative Society Ltd v Arua Municipal Council*, HC MC No. 003 of 2016, Mubiru J. expressed the opinion that in order to bring an action for judicial review, it is a requirement that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large. The "public" nature of the decision challenged is a condition precedent to the exercise of the courts' supervisory function.

[13] On the matter before me, it is not in dispute that that the Respondent is a public body that acted in exercise of its public function. The matters in issue involve public law principles that are relevant to other officers of the Respondent in regard to management of land registration and also have a bearing on other members of the public. The application thus raises public law matters and is thus amenable for judicial review.

Issue 2: Whether the application raises grounds for judicial review?

[14] *Rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019* provides that the “court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching the decision and that, as a result, there was unfair and unjust treatment”. In that regard, the duty of the applicant in an application for judicial review is to satisfy the court on a balance of probabilities that the decision making body or officer subject of his challenge did not follow due process in making the respective decisions or acts and that as a result, there was unfair treatment of the applicant which is likely to have an effect on other members of the public.

[15] In the instant case, the complaint by the Applicants is that the decision by the Respondent to cancel their certificates of title was tainted with illegality and procedural impropriety. I will examine each of the allegations separately.

The Ground of Illegality (Ultra vires Conduct)

Submissions by Counsel for the Applicant

[16] Counsel for the Applicants submitted that the powers of the Respondent under Section 91 of the Land Act (as amended) do not extend to cancellation of a certificate of title for a bonafide purchaser for value without notice as such a title can only be cancelled for fraud by a competent court of law pursuant to

the provisions of Section 177 of the RTA. Counsel cited the case of *Ssemakula Sulaiti v Commissioner Land Registration & Attorney General*, HMC No. 75 of 2009 to the effect that the powers of the Commissioner Land Registration under Section 91 of the Land Act are subject to the provisions of the Registration of Titles Act and intended to give effect thereto; and that the certificates the respondent can deal with under section 91 of the Land Act are those issued under Sections 14, 28, 39 and 40 of the Land Act. Counsel also cited ***C.R. Patel vs The Commissioner Land Registration & 2 Others, HCCS No. 87 of 2009*** to the effect that when an allegation of fraud is made, the proper avenue for adjudication over the matter is S. 176(c) of the Registration of Titles Act, where the person alleging fraud files a suit to cancel the fraudulent entry on account that fraud is such a serious allegation that must be specifically pleaded and proved beyond a mere balance of probabilities and cannot be raised and casually proved before the Commissioner Land Registration. It was also held that errors, illegalities and even fraud in earlier registrations cannot entitle the defendant to cancel registration of a person who is not privy to those errors.

[17] Counsel also challenged the Respondent's action of lodging a caveat on the certificate of title for Plot 2011 which prevented its transfer into the names of the Applicants from Niyonzima Simon Mabbe. Counsel argued that the said caveat was lodged outside the prescribed circumstances under Section 170(a) of the RTA which empowers the Respondent to lodge caveats on titles on behalf of the Government or on behalf of any person who is under disability of infancy, coverture, lunacy, unsoundness of mind or absence from Uganda. Counsel submitted that none of the concerned parties was under any incapacity or outside the country, the complainants were present and able to file a complaint which led to the cancellation order; Niyonzima Simon Mabbe and the Applicants were all available and there was no misdescription of the

land, or fraud alleged. Counsel argued that the act of filing the caveat was ultra vires for having been done in excess of the Respondent's powers.

Determination by the Court

[18] Illegality has been described as the instance when the decision making authority commits an error in law in the process of making a decision or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality. Lord Diplock in the case of *Council of Civil Service Unions v Minister for Civil service* (1985) AC 375, made the following statement;

“By illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised”.

[19] A public authority will be found to have acted unlawfully if it has made a decision or done something without the legal power to do so. Decisions made without legal power are said to be ultra vires, which is expressed through two requirements: One is that a public authority may not act beyond its statutory power; the second covers abuse of power and defects in its exercise. See: *Dr. Lam –Lagoro James v Muni University, HCM No. 007 of 2016*.

[20] It is also the position of the law that where discretionary power is conferred upon legal authorities, it is not absolute, even within its apparent boundaries, but is subject to general limitations. As such, discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to the exercise of discretion are usually expressed in different ways, such as requirement that the discretion has to be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, or

that the decision must not be arbitrary or capricious. See: *Smart Protus Magara & 13 Others v Financial Intelligence Authority, HCMC No. 215 of 2018*.

[21] In the instant case, it was alleged that the Respondent did not have powers to cancel a certificate of title in the name of a person that qualified to be a bona fide purchaser for value without notice and that such title could only be cancelled upon proof of fraud before a competent court of law. It is important to appreciate the facts in the present case. According to the Amendment Order issued by the Respondent on 29th September 2022, the land as comprised in Kyagwe Block 80 Plot 272 was on a blue page in the names of Erenesti Jjagwe. The Administrators of the estate of the late Lule Lulencio (Mayanja Nathan & Millia Nabulya) caused conversion of the land on Block 80 Plot 272 from the Blue Page to a white page in absence of a corresponding blue page in the name of Lule Lulencio. The Registrar concluded that the certificate of title comprised in Plots 2009, 2010 and 2011 that came out of the sub-division of Plot 272 in the names of the Administrators of the estate of the Late Lule Lulencio had no roots. The Registrar accordingly cancelled the titles for the above named plots from the register book for having been illegally and or irregularly issued without a corresponding Blue page in the names of Lule Lulencio.

[22] The above facts disclose that third parties exploited weaknesses within the land registry, converted a title that was in the name of Erenesti Jjagwe at blue page stage into a white page in the name Lule Lulencio. The said third parties (Administrators of the estate of the late Lule Lulencio) had the land registered into their names, sub-divided it into three plots, two of which they sold to Niyonzima Simon Mbabbe (Plots 2010 and 2011) which in turn he sold to the present Applicants. According to the evidence on record, Plot 2011 was registered in the name of Niyonzima Simon Mbabbe on 6th October 2011 while Plot 2010 was registered in his name on 1st November 2021. On 30th November 2021, the 2nd Applicant requested for a search on the register to confirm

ownership of Plot 2010 and he received a search certificate confirming that Niyonzima Simon Mbabbe was the registered proprietor thereof. On 5th July 2022, the 2nd Applicant did the same in respect of Plot 2011 and the search certificate indicated Niyonzima Simon Mbabbe as the registered proprietor. The Applicants then went ahead and purchased the suit land. Plot 2010 was transferred and registered in their names. Plot 2011 could not be registered in their names because the Respondent lodged an official caveat over the same pursuant to the provision under Section 170(a) of the RTA.

[23] The question that arises from the above set of facts is whether what occurred was an error, illegality or irregularity curable under Section 91 of the Land Act on the one hand or a fraudulent dealing in land on the other hand? It appears clear to me that the act of creating a white page in the name of a person over land in respect of which there was no blue page was not an error by an officer in the land registry that was diligently doing his/her job. It was clearly a dishonest act either with the connivance between the officer in the land office and the third parties or by deception applied by the third parties upon the officer in the land office. Either instance would constitute evidence of fraud. In my opinion, for the Respondent to classify such an occurrence as a mere error, illegality or irregularity curable under Section 91 of the Land Act tends to being a cover up on the part of the Respondent. The Respondent ought to have considered the fact that owing to what had transpired in the land registry, parties that were neither party to the fraudulent dealings nor had notice thereof had acquired title over the land in issue. The Respondent knew that where a person has obtained registered proprietorship over land, they can only be deprived of the same in circumstances spelt out under Sections 176 and 177 of the RTA. Under those provisions, the power is granted to the High Court to order cancellation of such title or an entry thereof. For completeness, I will restate the relevant provisions of the law.

[24] Section 59 of the Registration of Titles Act (RTA) Cap. 230 provides as follows;

“Certificate to be conclusive evidence of title

No certificate of title issued upon application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has power”.

[25] Section 176 of the RTA provides that a registered proprietor of land can only be deprived of land in any of the circumstances stated thereunder. Relevant to the present case is in the case of a person deprived of any land by fraud as against the person registered as proprietor of that land otherwise than as a transferee bona fide for value from or through a person so registered through fraud. Under Section 177 of the RTA, only the High Court has power to order cancellation of a certificate of title or an entry on a certificate of title after being satisfied particularly on the ground of fraud. In other instances, the Land Act Cap 227, as amended (2004), in Section 91 thereof, empowered the Commissioner Land Registration to effect such changes but those powers expressly exclude cases involving fraud. As such, any action that may lead to deprivation of land based on allegations of fraud must be filed in court, investigated and determined by the court. See: *Hilda Wilson Namusoke & 3 Others [As Administrators of the Estate of the late Nambi Magdalene Scot] v Owalla’s Home Investment Trust & Commissioner Land Registration*, SCCA No. 15 of 2017.

[26] In the circumstances, therefore, in ordering cancellation of the certificate of title for land comprised in Kyaggwe Block 80 Plot 2010 registered in names of the Applicants who, upon evidence, would qualify to be bona fide purchasers for value without notice, the Respondent acted ultra vires their power granted under Section 91 of the Land Act and under the Registration of Titles Act. The same finding applies to the order of cancellation of the certificate of title for land comprised in Kyaggwe Block 80 Plot 2011 in the name of Niyonzima Simon Mbabbe. The action by the Respondent was therefore illegal and this ground for judicial review has been established by the Applicants.

[27] The other complaint was that the Respondent exceeded its powers when it lodged a caveat on the certificate of title for Plot 2011 contrary to the provision under Section 170(a) of the RTA. It was averred by the 2nd Applicant that because of the said caveat, the said title could not be transferred and registered in their names despite presence of evidence of acquisition of the same. This evidence was not controverted. Section 170(a) of the RTA provides that;

“The registrar may exercise and shall perform the following powers and duties –

- a) To lodge a caveat on behalf of the Government or on behalf of any person who is under disability of infancy, coverture, lunacy, unsoundness of mind or absence from Uganda, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person, and also to prohibit the dealing with any land in any case in which it appears that an error has been made by mis-description of the land or otherwise in any registered certificate of title or in any instrument, or for the prevention of any fraud or improper dealing”.*

[28] It was argued by Counsel for the Applicants that the Respondent lodged the said caveat on the certificate of title for Plot 2011 in absence of any of the circumstances set out under the above provision and, as such, the Respondent

was not empowered to do so. I am in agreement with the submission by Counsel for the Applicants. The caveat lodged by the Respondent was done neither on behalf of the Government nor on behalf of any person who was under disability of infancy, coverture, lunacy, unsoundness of mind or absence from Uganda. There was also no circumstance indicating that an error had been made by way of mis-description of the land. As already found herein above, it was overtly clear to the Respondent that dishonest dealings had taken place in the land registry in circumstances that strongly point to fraud. The same could not, by any stretch, be classified as a mis-description of land.

[29] In the circumstances, the Applicants have established that by lodging a caveat that prohibited transfer of land that they had lawfully acquired, and lodging it in circumstances that were outside its powers under Section 170(a) of the RTA, the Respondent acted without jurisdiction and its decision was ultra vires and thus illegal. This ground for judicial review has also been established.

Allegations of Procedural Impropriety

Submissions by Counsel for the Applicants

[30] Counsel cited the cases of ***Mohamed Alibhai v AG HCMC No. 217 of 2021*** and ***Ojangole Patricia v AG HCMC No. 303 of 2013*** to the effect that it is a fundamental principle of justice and procedural fairness that no person shall be condemned unless that person has been given prior notice of the allegations made against him or her and a fair opportunity to be heard. Counsel submitted that the Respondent violated the rules of natural justice under Article 42 of the Constitution and Section 91(8) of the Land Act Cap 277 by failing to notify the Applicants of the public hearing and to accord the Applicants any hearing. Counsel stated that the notice in the New Vision was not addressed to the Applicants who were the registered proprietors of Kyaggwe Block 80 Plot 2010. Counsel stated that even when and the Applicants

complained of non-service, no remedial notice was given which compelled the 2nd Applicant to make an uninvited appearance for the hearing which still did not take place.

[31] Counsel further submitted that the decision by the Respondent had elements of bias as seen from the notice that was issued titled “Notice of a hearing to amend the Register book”. Counsel argued that the title was indicative that the Respondent already harbored an intention to amend the Register and the hearing was simply a formality. Counsel cited the decisions in *R v Architects’ Registration Tribunal [1945] 2 All E. R. 131 (KB) at p. 138*, and *Dr. Lam – Lagoro James v Muni University (supra)* for the submission that where a decision maker has a preconceived opinion and a predisposition to decide a cause or an issue in a certain way, or where one does not leave the mind perfectly open to conviction, and one’s inclination clearly appears bending towards one side, it all shows an attitude of bias. The presence of bias thus leaves a reasonable person in doubt as to the impartiality of the decision making process.

Determination by the Court

[32] As a ground for judicial review, “procedural impropriety” has been defined to mean “the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.” See: *Council of Civil Service Unions & Others vs. Minister for the Civil Service [1985] AC 374 Per Lord Diplock*. Under the law, procedural impropriety encompasses four basic concepts, namely; (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate expectations created by the decision maker. See: *Dr. Lam – Lagoro James v Muni University (HCMC No. 0007 of 2016)*.

[33] Procedural propriety calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause. The latter essentially provides against bias. Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she should be given an opportunity to state his/her case; and thirdly, the tribunal should act in good faith. See: *Byrne v. Kinematograph Renters Society Ltd*, [1958]1 WLR 762.

[34] The complaint in the present case is that the Applicants were not given an opportunity to be heard. It is stated that despite the register indicating that the Applicants were the registered proprietors of land on Kyaggwe Block 80 Plot 2010, the notice issued and published in a newspaper was not even addressed to them. It was addressed to a former registered proprietor. Even when the Applicants learnt of the notice and wrote a complaint through their lawyers to the Respondent, they were offered no explanation. Uninvited, the Applicants appeared for the hearing on the date indicated in the notice but, according to their evidence, no hearing took place. The 2nd Applicant who deponed to the affidavit in support of the application stated that despite the fact that the hearing did not take place, he interfaced with the Respondent's official handling the matter and tendered to him documents pertaining to the land in issue but the deponent still received no attention. The Applicants later received a notice of cancellation of the titles to the suit land with no evidence that any public hearing ever took place. This evidence by the Applicants stands uncontroverted and I have found no reason not to believe and rely on it.

[35] As a requirement for procedural propriety, where the party aggrieved by the decision or action of a public body was summoned and appeared before the body, the court in judicial review would be required to examine the nature of

the proceedings for procedural propriety and fairness. However, where the party did not attend the proceeding, the major focus is upon consideration of whether the said party was effectively served with process requiring them to attend the proceeding and the party declined, failed or refused to attend. Where there is proof that the aggrieved party was effectively summoned to attend the proceeding and they kept away, the public body would have executed their obligation to adhere to the principles of natural justice. Where there is no evidence that the party was ever served with process or where alleged service is apparently ineffective, a decision reached in such circumstances would be impeached for failure to adhere to the rules of natural justice.

[36] In the present case, there is no evidence that any notice was issued inviting the Applicants to respond to the complaint that was made regarding the suit land. The Applicants were on record as the registered proprietors of the land at Plot 2010. The respondent is the custodian of the register and, as such, there is no doubt that they were aware of the Applicant's title in the suit land. In the circumstances under which the Respondent acted in the present case, the Respondent was under duty to issue notice as provided for under Section 91(8) and (9) of the Land Act, as amended, which provides as follows;

“(8) In exercise of any powers under this section, the Registrar shall: -

- a) Give not less than twenty- one day's 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;*
- b) Provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given;*
- c) Conduct any such hearing in accordance with the rules of natural justice but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law;*
- d) Give reasons for any decision that he or she may make.*

(9) The Registrar shall communicate his or her decision in writing to the parties and the committee.”

[37] On the facts before the Court, the requirements set out in the above provision regarding notice to the affected parties were not complied with which amounted to a breach of the Applicant’s right to be heard and treated fairly and justly as provided for under Article 42 of the Constitution and as required under Section 91(8) and (9) of the Land Act. This constitutes a gross breach of the rules of natural justice and amounts to procedural impropriety.

[38] Regarding the allegation of bias, I am not convinced that considering the heading of the notice that was published in the newspaper would suffice, without more, to impute bias on the part of the Respondent. I have not found any evidence of bias and this ground fails.

[39] In all, however, the Applicants have satisfied the Court on a balance of probabilities that the Respondent did not follow due process and failed to adhere to the rules of natural justice in the course of exercising statutory powers. The ground of procedural impropriety thus succeeds. In all, the 2nd issue is answered in the affirmative.

Issue 3: Whether the Applicants are entitled to the reliefs sought?

[40] In view of the findings above, the Applicants have succeeded both on grounds of illegality and procedural impropriety. The Applicants are therefore entitled to the declarations sought and the orders of Certiorari, Prohibition and Mandamus in the terms I will indicate in the summary below. Let me, however, first pronounce myself on the claim by the Applicants for general damages.

[41] The Applicants, in addition to the reliefs stated above, also claimed for general damages. The position of the law is that in judicial review, there is no

right to claim for losses caused by the unlawful administrative action. Damages may only be awarded if the applicant, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in judicial review, which would have entitled him or her to an award of damages in a separate suit. In that regard, *rule 8(1) of the Judicature (Judicial Review) Rules, 2009* provides as follows:

“8. Claims for damages

(1) On an application for judicial review the court may, subject to sub rule (2), award damages to the applicant if,

(a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter which the application relates; and

(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages.”

[42] It has been held that the additional cause of action which may be added to an application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or a private action in tort such as negligence, nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. See: *Three Rivers District Council v Bank of England* (3) [3003] 2 AC 1; *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 and *Fordham, Reparation for Maladministration: Public Law Final Frontiers* (2003) RR 104 at page 104 -105.

[43] On the case before me, it has been established that the impugned decision herein was reached illegally and with procedural impropriety. From evidence, I have found breach of a statutory duty on the part of the Respondent by deliberately flouting the statutory requirements under Section 91 of the Land Act. As averred in the affidavits in support of the application, the Applicants have been subjected to illegal deprivation of property, have suffered loss and

inconvenience. They have been denied registered proprietorship of the property on Plot 2011 as a result of ultra vires conduct of the Respondent. Although damages in judicial review should be granted in rare cases, I find this a fit and proper case for assessment and award of damages.

[44] The position of the law is that general damages are awarded at the discretion of the court and the purpose of general damages is to restore the aggrieved party to the financial position that he/she would have been in had the breach complained of not occurred and in as far as money can do. See: *EAPT Corporation Ltd v Dr. L.P Lodhia C.A No. 52 of 1974* and *Robert Cuossens vs. Attorney General SCCA No. 8 of 1999*. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial bank v Kigozi [2002] 1 EA 305*.

[45] In their submissions, Counsel for the Applicants stated that the Respondent proceeded to make its decision in a high handed manner well aware of the vehement protests from the Applicants. Counsel prayed for general damages and proposed a sum of UGX 100,000,000/= as general damages. From the entire evidence and circumstances of this case, I am convinced that the Applicants ought to be compensated for the unfairness and injustice occasioned to them. I however find the sum proposed by the Applicants' Counsel on the higher side. I find a sum of UGX 50,000,000/= (Fifty Million Shillings Only) sufficient to meet the ends of justice in this matter and I award the same to the Applicants as general damages.

[46] Regarding costs, in line with Section 27 of the Civil Procedure Act Cap 71, the Applicants are entitled to costs of this application and the same are accordingly awarded to them against the Respondent.

[47] In all, the application succeeds and is granted upon the following declarations and orders;

- a) A declaration that the decision by Respondent to cancel the certificates of title for land comprised in Kyaggwe Block 80 Plots 2010 and 2011 situate at Dundu, Buntaba & Kiryamuli (**the suit land**) was illegal for being ultra vires the powers of the Respondent.
- b) A declaration that the process and act of the Respondent lodging and registering a caveat on the certificate of title for the land comprised in Kyaggwe Block 80 Plot 2011 vide Instrument No. MKO-00116512 was illegal for being ultra vires the powers of the Respondent.
- c) An Order of Certiorari quashing the decision of the Respondent to cancel the certificates of title for land comprised in Kyaggwe Block 80 Plots 2010 and 2011 situate at Dundu, Buntaba & Kiryamuli (the **“suit land”**) registered respectively in the names of the Applicants and one Niyonzima Simon Mbabbe.
- d) An Order of Prohibition restraining the Respondent or her agents from implementing or acting upon the decision/order to cancel the certificates of title for the suit land.
- e) An Order of Mandamus compelling the Respondent to remove the caveat lodged on the certificate of title for land in Kyaggwe Block 80 Plot 2011 and have the same registered in the name of the Applicants subject to payment of requisite fees and to compliance with the registration processes; and restoring or maintaining the Applicants’ names on the certificate of title for land comprised in Kyaggwe Block 80 Plot 2010.
- f) An Order of a Permanent Injunction restraining the Respondent or its agents from registering any instrument adversely affecting the Applicants’ interest and or proprietorship over the suit land.
- g) An order for payment of a sum of UGX 50,000,000/= by the Respondent to the Applicants as general damages.

h) An order for payment of the costs of the application by the Respondent.

It is so ordered.

Dated, signed and delivered by email this 19th day of October, 2023.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long, sweeping horizontal stroke extending to the right.

Boniface Wamala

JUDGE