

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]

MISCELLANEOUS CAUSE NO. 135 OF 2023

ALBINOS ASIIMWE (Administrator of the estate of the late

Doreen Ainomugisha Muheebwa)

===== APPLICANT

VERSUS

1. SANDRA NDYOMUGYENYI

2. ATTORNEY GENERAL

===== RESPONDENTS

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

This application is by notice of motion under articles 23, 26, 28, 42, 44(c) of the constitution of the Republic of Uganda, section 33, 36 and 38 of the Judicature Act, Rule 3, 6, 7 and 8 of the judicature (Judicial Review) Rules of 2019 as amended seeking for orders that; -

- a) A declaration that the 1st Respondent acted illegally, irregularly, irrationally when she breached the sub-judice rule by issuing a directive stopping the applicant from accessing the premises which he is administering and in total disregard of the ongoing case Vide Civil Suit No. 367 of 2023 Asimwe Albinos & Another Vs Mulangira Stuart Kateregga & 5 others.
- b) A declaration that the 1st Respondent acted illegally, irrationally and ultra vires when she initiated parallel investigations in respect of a matter already before court with full knowledge of existence of a civil suit which act amounts to interference with the independence of the judiciary.
- c) A declaration that the 1st Respondent acted illegally, irregularly and irrationally when she made a report and recommendations against the Applicant without hearing from him in total disregard of the principles of natural justice.
- d) An order of certiorari quashing the decision and recommendations of the 1st Respondent contained in the report dated 13th June 2023, prohibiting the

Applicant from accessing the premises constructed by the late Ainomugisha Doreen Muheebwa situated on a kibanja at Freehold Register volume 59, Folio 21, Kyadondo County Mengo and being administered by the Applicant.

- e) An order of prohibition barring the Respondents from prohibiting and or stopping the Applicant from accessing the premises which form part of the estate of the late Ainomugisha Doreen Muheebwa.
- f) An injunction restraining the Respondents, their agents or any one deriving authority from them from implementing the impugned decision/finding and or recommendations of prohibiting the applicant from accessing the premises situated at Freehold Register volume 59B, Folio 21, Kyadondo County Mengo.
- g) An order awarding the applicant general damages.
- h) Costs of this application be provided for.

The application is supported with the affidavit of **Albinos Asimwe** the administrator of the estate of the late Ainomugisha Doreen Muheerwe whose details are on record but briefly states that; -

1. The late Ainomugisha Doreen Muheebwa during her lifetime executed a tenancy agreement with Mulangira Stuart Kateregga for a period of 12(twelve) years and pursuant to close 7 of the agreement the late was at liberty to develop the kibanja with permanent and temporary structures suitable for her business which she did while clause 16 barred Mulangira Stuart Kateregga from terminating the tenancy except with ample compensation and the same are subject to the impugned report.
2. Upon completion of the construction, the late Ainomugisha Doreen Muheebwa established a bar, restaurant and washing bay in partnership with her husband Henry Muheebwa Owanzoire and they did business under name and style of Treza's lounge and she carried on the day to day running of the business and upon her demise I applied for letters of administration and carried on with the daily affairs of the business.
3. In 2023, as the administrator of the estate of the late Ainomugisha Doreen together with Henry Muheebwa filed a case in High Court Commercial Division of Uganda Vide Civil Suit No. 367 of 2023 against Mulangira Stuart Kateregga, Ntwatwa Lule, Bob Semakula, Karungi Sheila Kajungu, Richard Kajungu and Belimax Technology Ltd which were threatening my possession and utilization of the premises belonging to the late Ainomugisha Doreen Muheebwa.

4. Sometime in June 2023, I was shocked to find out that the 1st Respondent acting in her capacity as an officer of state House upon a complaint by one Ntwatwa Sekiziyivu Lule unilaterally made a report with recommendations prohibiting and or stopping me from accessing the premises which form part of the estate I administer and directing the police to arrest me if I ever step foot on the premises.
5. I was never invited for the meeting or hearing before the 1st Respondent made the report and recommendations despite having held several meetings which conduct was in breach of the principles of natural justice.
6. The impugned report usurped the powers of court and made directives/recommendations in disregard of my right to property and the ongoing court case in commercial division.
7. The Respondent acted illegally, irregularly, irrationally and ultra vires when she directed police to apprehend me when seen stepping foot on the premises.
8. I through my lawyers wrote to the Respondents asking them to retract the report to no help.
9. Due to the impugned report, I have been deprived of accessing the premises and managing business for which I am entitled to compensation.
10. I have been advised by my lawyers which advise I verily believe to be true that the 2nd Respondent has no legal mandate to make the decision/recommendations reached upon and the same was arbitrary and he is vicariously liable for the actions of the 1st Respondent who is an employee of government.

In reply, the Respondents opposed the application and in an affidavit sworn by **Sandra Ndyomugenyi, the 1st Respondent** and a principal legal officer in state house legal department whose details are on record but briefly states that; -

1. The instant application is bad in law, misconceived and devoid of any merit in so far as it does not disclose or raise any question for judicial review and the applicant is not entitled to any relief sought therein.
2. I know that there is no decision that was arrived at by the Respondents that would give rise to grounds for judicial review.
3. I know that state house received several complaints including one of Ntwatwa Lule through his lawyers of SK & Partners Advocates in respect to ownership of land comprised in FRV 59B, Folio 21, Kyadondo County located at Mengo and different parties were employing goons and thugs to attack their rivals and cause destruction and mayhem on the land.

4. Upon receipt of the complaint, a meeting was scheduled for the 31st day of May 2023 to interact with the complainants and the other interested parties in order to find a resolution to the dispute.
5. I know that the applicant was duly notified of the meeting through his lawyers, Messrs. Mwesigwa Rukutana & Co. Advocates and the same attended the meeting where they were given an opportunity to make their representations in respect to the applicant's interest in the disputed land.
6. After hearing and obtaining views from all the concerned parties that attended the meeting, I made a report wherein I stated my observation and recommendations which were agreed upon by all parties who attended the meeting.
7. I never determined any of the matters before the courts of law and none was brought to my attention.
8. Whatever the applicant is attempting to challenge are mere recommendations that were arrived at in the meeting held on 8th June 2023 and the same were for purposes of preserving the status quo and peace.
9. The recommendations contained in the report were reached after according the applicant a hearing where it was established that ownership of land was being contested by several individuals.

Legal representation.

Mr. Agaba Asaph together with Mr. Douglas Sembuya represented the applicant while Mr. Allan Mukama together with Mr. Hillary Nathan Abilu represented the Respondents.

At the hearing, both parties agreed to file written submissions which they did and their details are on record.

Counsel for the applicant in his written submissions raised three issues for court's determination to wit; -

- 1. Whether the application is amenable for judicial review*
- 2. Whether the application discloses any grounds for judicial review*
- 3. What remedies are available to the parties.*

Submissions by counsel for the Applicant.

Issue 1

Whether the application is amenable for judicial review?

Counsel referred to rule 5 of the judicature judicial review rules of 2019 as amended and stated that for an application to be amenable by judicial review, it must involve a public body in a public law matter. The court must be satisfied, first that the body under challenge is a public body whose activities can be controlled by judicial review and secondly, the subject matter of the challenge involves claims based on public law principles and not the enforcement of private law rights.

Counsel submitted that it is not in dispute that the 1st Respondent is a public official and state house which she works for is a public body whose acts are liable to the court's power of judicial review. It is also not in dispute that the subject of the challenge by the applicants involved public law matters and the 1st Respondent conducted public meetings.

Counsel referred to the case of **Mohammed Alibhai Vs Attorney General HCMA No. 217 of 2021** where court stated that; -

“in view of the evidence that the sub-committee in their case had undertaken inquiries, made findings and recommendations in form of a report, it acted as a quasi-judicial body. As such, its actions and decisions amounted to conduct of a public body that is subject to the court’s supervisory power by way of judicial review”.

Issue 2

Whether the application discloses any grounds for judicial review?

Counsel submitted that it is trite law that judicial review is not concerned with the merits of 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 rights as such but to ensure that public powers are exercised in accordance with the basic standard of legality, fairness and rationality.

Counsel submitted that the Respondents decision was illegal in as far as it usurped the powers of court and made directives/recommendations in disregard of his right

to property and the ongoing case in the Commercial Division of the high court when it warned and stopped the applicant from accessing premises that form part of the estate of the late Ainomugisha which he administers and further acted illegally and irrationally when she directed police to apprehend the applicant when seen stepping on the premises.

Counsel submitted that the 1st Respondent is the principal private secretary (PPS) of the president whose overall coordinator, supervisor and manager of the related staff and functional units. That the 1st Respondent was very aware that the complaint by Ntwatwa Lule was not under the legal mandate of state house but still went ahead and organized meetings and came up with the impugned report with illegal directives and orders.

Counsel submitted that in doing so the 1st Respondent usurped the powers of court and her actions contravened the sub judice rule. It is clear as seen in the report that the 1st Respondent was aware of several rulings by court and that there was also a pending case at the commercial court vide CS No. 367 of 2023 but still the 1st respondent went ahead and directed that Dr. Ntwatwa should use the land without interference from other parties in total contravention of the sub-judice rule and an interference with the independence of the judiciary which has the mandate to determine cases.

Counsel further referred to the case of **Mohamed Allibhai Vs Attorney General HCMC No. 217 of 2021.**

Counsel for the Applicant submitted that there was procedural impropriety as the Applicant was never invited for a hearing before the 1st Respondent made the report and recommendations despite having held several meetings and that 1st Respondent breached the principles of natural justice. That the letters referred to as invitations for the applicant and his lawyers were never attached to the affidavit and also the attendance list attached does not bear the signature of the applicant and his lawyers hence the applicant was never heard before reaching the said decision.

Counsel concluded that the recommendations of the Respondents were so outrageous and defy any rules of logic, the applicant was not invited for a hearing, the matter was before court and pending determination and then the 1st Respondents decides who shall stay in possession of the kibanja and stops the applicant from setting foot on the land.

Counsel for the Respondents in his written submissions raised three preliminary objections to wit; -

- a) The 1st Respondent has been wrongly joined as a party to the application.
- b) The applicant is not seized with direct and sufficient interest in the matter
- c) The application is not amenable to judicial review.

However, I have looked at the three preliminary objections and find that they are a duplicate of the issues raised for court's determination and the same shall be handled therein and for the interest of justice, it is my considered view that this application proceeds on its own merit.

Submissions by counsel for the Respondents.

Issue No. 1

Whether the application is amenable for judicial review

Counsel referred to rule 7A of the judicature (Judicial Review) Rules 2019 which 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 or under the law; and
 - c) That the matter involves an administrative public body or official.
- 2) 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 a decision and that, as a result, there was unfair and unjust treatment.

Counsel submitted that the dispute between the parties was one of a private nature and that there was no decision reached in the mediation meeting held by the 1st Respondent but rather mere recommendations.

Counsel referred to the case of **Wakiso Transport Tours and Travel Ltd Vs IGG & 3 Others MC No. 53 of 2013** where it was held that; -

“findings, recommendations, suggestions and observations as opposed to decisions cannot be subject of the prerogative orders of certiorari”.

Analysis of court

Issue 1

Whether the application is amenable for judicial review?

Rule 7A of the Judicature (Judicial Review) Rules of 2019 as amended provides that;
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- 1 “the court shall, in considering an application for judicial review, satisfy itself of the following-
 - d) That the application is amenable for judicial review;
 - e) That the aggrieved person has exhausted the existing remedies available within the public or under the law; and
 - f) That the matter involves an administrative public body or official.
- 2 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 a decision and that, as a result, there was unfair and unjust treatment.

In the case of **Dott Services Ltd Vs Attorney General & Auditor General (Misc Cause No. 125 of 2009)** court held that: -

“Certiorari issues to quash decisions made by a statutory body or by a public officer or an inferior court or tribunal. It cannot issue against mere findings, recommendations, suggestions or observations.

The above case was cited with approval in the case of **Luwero Town Council Vs Attorney General (Misc Cause No. 150 of 2013)** (unreported) where like in this case the IGG had investigated a matter and made recommendations to discipline some official of Luwero Town council including the Town Clerk. Court found that there was no decision to review.

For an application for judicial review to be properly before court, there must be a decision attached to the application which it seeks to challenge.

In the instant case, one Dr. Ntwatwa Sekiziyivu lodged a complaint with state house about a land dispute upon which the 1st Respondent held a meeting with the parties involved in the dispute for the purposes of preserving status qua and peace. The 1st Respondent having listened to the parties made some observations, findings and recommendations in a report dated 13th June 2023.

It is my considered view that there is no decision that was arrived at by the 1st Respondent to give rise to grounds for judicial review. The report of the meeting in this case cannot amount to a decision.

The evidence on record shows that upon receipt of the complaint a meeting was scheduled for 31st day of May 2023 to interact with the complainants and other interested parties in order to find a solution to the dispute.

The applicant did not adduce evidence to show that the report interfered with matters before courts of law yet he stated that there is a case in commercial court.

The applicant tried to convince court that the Respondent violated the sub judice rule which issue he should have raised with the trial court where the suit is pending to avoid parallel litigation which could lead to conflicting decisions and abuse of court process.

It is the finding of this court, that this application is not amenable for judicial review since there is no decision to review.

Having resolved issue No. 1 in the negative, it renders issues No. 2 a moot hence it will not be considered.

Issue No. 3

What remedies are available to the parties?

Since the applicant failed to prove his application for judicial review, he is not entitled to the remedies sought.

Conclusion.

In the final result, this application fails with the following orders; -

- 1. The application is hereby dismissed.**

2. Considering the nature and circumstances of this judicial review, no orders to costs.

Dated, signed, sealed and delivered by email on this **27th October 2023**

Emmanuel Baguma

Judge.