

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

MISC. CAUSE NO. 281 OF 2022

VIANNE MULISA ===== Applicant

(The administrator of the estate of the late Kadoma John)

VERSUS

1. THE COMMISSIONER LAND REGISTRATION

2. NAJUMA VICTO, MUYINDA SUZAN

& BUYANA EDWARD===== Respondents

(The administrator of the estate of the late Ssebombo Robert)

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

This application is by notice of motion under Article 1, 2, 28 of the constitution of the republic of Uganda, section 36 (1), (a), (b), (c), (d), 2, 3, 37, 38 of the Judicature Act as amended, section 98 of the Civil Procedure Act, Rule 3(1) (2), (4), (5) and (6) of the Judicature (Judicial Review) as amended seeking for orders that;-

- a) An order be issued by this honourable court extending the time within which this application can be filed.*
- b) An order of certiorari be issues against the 1st Respondent to quash the arbitrary decision of the 1st Respondent to cancel the title belonging to John Kadoma for Bulemezi Block 917 Plot 1.*
- c) An order of prohibition restraining the Respondents, their agents, assignees, successors in title or any persons claiming any authority, from implementing or enforcing the impugned decision of the 1st Respondent to cancel the title for Bulemezi Block 917 Plot 1 in the names of Kadoma John.*
- d) An order for injunction be issued to restrain the Respondents their agents or servants and any public bodies, institutions and personalities from implementing and enforcing the impugned decision of the 1st Respondent*

to cancel title for Bulemezi Block 917 Plot 1 in the names of Kadoma John and reregistering the same in the names of the 2nd Respondent.

- e) A declaration that the 1st Respondent acted illegally, irrationally and with procedural flaws in arriving at its decision herein complained about.*
- f) An order of mandamus be issued compelling the 1st Respondent to reinstate, re- gazette or otherwise recognize John Kadoma as the Registered proprietor for Bulemezi Block 917 Plot 1.*
- g) A declaration that the decision made by the 1st respondent was made *ultra vires*.*
- h) An order for general damages.*
- i) Costs of this application be provided for.*

The application is supported by the affidavit of **Mulisa Vienne the applicant** whose details are on record but briefly states that;-

1. Around the 24th of October 2021, I received summons from the commissioner land registration ministry of lands, housing and urban development being notified of a complaint lodged by Najuma Victo, Muyinza Suzan and Buyana Edward as administrators of the estate of the late Robert Ssebombo.
2. The summons notified me of the intention by the 1st respondent to amend the register by cancellation and or rectification of the title for Bulemezi Block 917 Plot 1 for the interest of Ssebombo Robert and the same invited me for a public hearing on 26th October 2021 at 10:00am at the office of the Commissioner Land Registration.
3. I attended the public hearing on 26th October 2021 but I was not availed with a copy of the complaint. At the hearing the Registrar asked me several questions about how my late father obtained the land in question.
4. On 5th November 2021, I wrote a complaint to the commissioner Land Registration about the public hearing on the suit land and the commissioner directed that investigations on the suit land be repeated by a different registrar. Summons for a fresh hearing were issued for 7th December 2021 but the hearing was frustrated by the 2nd Respondents' absence and the same was adjourned sine dine.
5. I found out through a random search carried out at land registry in Bukalasa on the 14th day of June 2022 that indeed there had been changes on the register book whereby my late father was the registered proprietor of Block 917 Plot 21 measuring 89.00 hectares instead of Bulemezi Block 917 Plot 1

measuring 259.100 hectares reduced the size of land owned by my late father.

6. On 21st June 2022, I through my lawyers of M/s Barenzi & Co. Advocates wrote to the commissioner land Registration about the said changes on the register as well as the ongoing public hearing before the same office.
7. Upon follow up of the said letter it was at that moment that the commissioner land registration availed us with a copy of the decision effecting the changes to the register.
8. To date the commissioner land registration has neither investigated the matter nor concluded a hearing that remained pending on 7th day of December 2021 since it had been adjourned sine dine and I was not informed of any proceedings after.
9. The decision of the 1st Respondent to deny/fail to allow me to appear and defend/give my side of the story pertaining to the land in issue and proceeding to cancel the certificate of title without completion of the public hearing goes against fundamental principles of natural justice and such failure should not be sanctioned by this court.
10. The 1st respondent had no jurisdiction to determine matters of fraud on land.

In reply, the 1st Respondent opposed the application and in an affidavit deposed by **Kafureeka Victor a Registrar of titles** in the office of the 1st Respondent whose details are on record but briefly stated that;-

1. The applicant is seeking for an order of certiorari, prohibition and injunction which cannot be sought in an application for extension of time wherein the office of the 1st Respondent made a decision to cancel a title and the applicant was always in the know of the decision of the first respondent.
2. The application for judicial review is barred by statutory limitation period in which the applicant had to commence action.
3. The application seeks to extend time within which to file an application for judicial review but no reason at all has been given as to why court should exercise its discretion to extend the time within which to file the said application.
4. The 1st Respondent received a complaint dated 20th July 2020 from Kasumba, Kugonza & Co advocates acting for and on behalf of Najuma Victo, Muyinza Suzan and Buyana Edward as administrator of the estate of the late Robert Ssebombo requesting for cancellation of the illegal transactions on the

certificate of title in respect of land comprised in Bulemezi Block 917 Plot 1 formerly Plot 21, 9 & 2 land at Kyanamuwanga.

5. We invited both parties and conducted a public hearing on 26th October 2021 where all parties concerned were present and presented their case and evidence which included documents.
6. The office of the 1st Respondent upon perusal of the register and evaluation of evidence made a decision dated 16th March 2022 and it was communicated to the Applicant who has always been in the know, which makes one year from the time the communication was made.

The 2nd Respondent also opposed the application and in affidavit sworn by **Buyana Edward** one of the Respondents whose details are on record stated that;-

1. We lodged a complaint with the 1st Respondent seeking cancellation of title from the names of the late Kadoma who fraudulently transferred land comprised in Bulemezi Block 917 Plot 1 into his names without authorization by the registered proprietor the late Robert Ssebombo.
2. The applicant indeed admits attending the public hearing on 26th October 2021 and thereafter he and his lawyer should have raised that concern that they wanted to be served with a complaint.
3. The 1st Respondent issued summons for a public hearing to both parties and the same was held following procedures and upon evaluation of evidence on record reached a decision to cancel the said title on 16th March 2022.

In rejoinder, the applicant reiterated his averments in chief but added that he was never made aware of the decision reached on 16th March 2022 and he only got to know about it on 14th June 2022 while making his own inquiries and efforts to have the same reversed internally were futile. By the time he obtained the formal decision on 22nd October 2022, the time within which to bring the application had already lapsed.

Representation.

Mr. Abel Kandiho together with Mr. Tsubira Isaac represented the Applicant, Mr. Ssekabira Moses represented the 1st Respondent while Mr. Stanley Kawalya represented the 2nd Respondent.

When the matter came up for hearing both counsel agreed and consented to the prayer for extension of time and resolved that the matter be heard on its merit.

Further parties also agreed to file written submissions and they were given schedule by court within which to file written submissions. The applicants were to file by 27th June and the Respondents were to file by 11th July 2023 but the Respondents did not adhere to the schedule whereby the 1st Respondent filed by 16th August 2023 and the 2nd Respondent filed by 11th August 2023.

I take note that the Respondents filed outside the schedule given by court and indeed parties should adhere to schedules given by court. However, for the interest of justice and given that this is an application for judicial review, and for court to reach a just decision. I have decided to consider the written submissions for the Respondent though filed outside the schedule.

Submissions by counsel for the Applicant.

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

- 1. Whether the application is amenable for judicial review?**
- 2. Whether the application raises grounds for judicial review?**
- 3. Whether the Applicant is entitled to the reliefs sought?**

Issue 1

Whether the application is amenable for judicial review?

Counsel submitted that judicial review is not concerned with the decision but with the decision making process. He referred to rule 7A of the Judicature (Judicial Review) Rules 2019.

Counsel submitted that the 1st Respondent is a public body that acted in exercise of its public function under section 91 of the Land Act as amended which makes this matter to fall within the ambit of Judicial Review.

Issue 2

Whether the application raises grounds for judicial review?

Counsel submitted that under the law, procedural impropriety encompasses four basic concepts, the need to comply with adopted rules for the decision making process, the requirement of fair hearing, the requirement that the decision is made

without any appearance of bias and the requirement to comply with any procedural legitimate expectations created by the decision maker.

Counsel contended that the proceedings before the 1st Respondent were tainted with procedural unfairness and impropriety. That much as the applicant was served with a summons for the public hearing, the said summons were never accompanied with a complaint against him or any piece of evidence impeaching or against the interests of the Applicant's father on the subject land leading the applicant to appear for the public hearing without knowing the case against him. He referred to the case of **Energo Project Vs Brigadier Kasirye Gwanga and Anor HCMA No. 558 of 2009**.

Counsel submitted that at the hearing the applicant was never allowed an opportunity to produce witnesses and documents to prove that his late father acquired the suit land rightly which rendered the hearing a nullity for failure to accord the applicant a fair hearing.

Counsel submitted that the 1st Respondent's hearing was illegal in as far as it failed to follow procedure.

Counsel also cited section 91 of the Land Act and submitted that the nature of complaint lodged by the 2nd Respondents was outside the scope stated in the said section. That this was a matter of fraud which the Registrar of titles had no powers to handle but required a full trial in court. He referred to the case of **Hilda Wilson Namusoke & 3 ors Vs Owella's Home Investment Trust EA Limited SCCA No. 15 of 2017**.

Counsel submitted that the 1st Respondent's decision made on 16th March 2021 was irrational in as far as the 1st respondent failed to hear the applicant's witnesses who were summoned and attended the hearing on 7th December 2021 only for the matter to be adjourned sine die without hearing. That the applicant was only shocked months later with a decision cancelling his late father's certificate of title without completion of the public hearing.

Counsel submitted that it is irrational, unreasonable and totally defeats logic that the same authority herein the 1st Respondent that kept the register in respect of Bulemezi Block 917 Plot 9 in a manner that it did, reflecting Block 917 Plot 9 as a clean and indefeasible title for over 30 years could now turn around and cancel the same title for errors or illegalities only known to the 1st Respondent as the custodian of the

Kalamazo yet such errors or illegalities are incapable of discovery by any other person from a simple examination of the duplicate certificate of title for Plot 9 or a simple search on its register.

Issue 3

Whether the Applicant is entitled to the reliefs sought?

Counsel submitted that having proven that the 1st Respondent's decision to cancel the certificate of titled owned by the late Kadoma was reached illegally, irrationally and under a wrong procedure, this court should quash the said decision and order for re-instatement of the title into the names of the late Kadoma with costs.

Submissions by counsel for the 1st Respondent.

Counsel for the 1st Respondent submitted on the application being filed out of time, however the parties agreed upon this issue and resolved that the matter be heard on its own merit. I will accordingly not consider the submissions on this issue.

Issue. 2

Whether the application raises grounds for judicial review?

Counsel submitted that the 1st Respondent is empowered under section 91 of the Land Act to correct the register. The applicant never complained at the trial that he was not served with a copy of the complaint. The 1st Respondent cited the law under which it proceeded and upon evaluation of the evidence from the hearing established that there was need to correct the register and proceeded to do so.

Counsel submitted that the applicant is estopped by doctrine according to section 114 and 28 of the Evidence Act. That the applicant admits that he attended a public hearing with his lawyer he is therefore estopped from saying that despite the fact that he and his family lawyer attended a public hearing, he did not know about the complaint against him. The logic question would then be what evidence was the applicant giving and intended to give if he did not know the complaint?

Counsel submitted that the decision of the 1st Respondent was not ultra vires. There was no fraud established in the instant case, but rather an amalgamation of the plots which was done in error.

Counsel referred to the case of **Logose Florence Judith Vs Law Development Centre HCMC No. 190 of 2021.**

Counsel submitted that the 1st Respondent did not cancel the late Kadoma's certificate of title for land comprised in Plot 21 but rather reversed an amalgamation of Plot 1, 21 and 9. That the Register book clearly shows that Kadoma acquired Plot 21 and not Plot 9. So amalgamation of plot 21 and 9 was illegal and erroneous hence the rectification of the register.

Issue 3

Whether the Applicant is entitled to the reliefs sought?

Counsel for the 1st Respondent submitted that the applicant is not entitled to the remedies sought since he has failed to prove that the decision of the 1st Respondent was illegal, irrational and procedurally improper.

Submissions by counsel for the 2nd Respondent.

Counsel submitted that the 1st Respondent acted within the power conferred to it by section 91 of the land Act to correct the register. He gave notice of the public hearing, listened to evidence from parties and upon evaluation of the evidence proceeded to effect changes on the register. That the applicant does not point out the exact provision of the law that was flouted.

Counsel submitted that it is not true that applicant was not aware of the complaint. He was clearly served with the complaint which he appeared a defended on 26th October 2021 and the denial at this stage is an afterthought. He cannot demand for an affidavit of service as the hearing before the 1st Respondent is not a court hearing governed by the Civil Procedure Rules that require filing an affidavit of service as proof of service.

Counsel submitted that the commissioner land registration is the one who initially ordered for amalgamation and after noticing that he had made an error summoned

the parties for a public hearing and rectified his own error by amending the register which was within the powers granted to it by section 91 of the land Act.

There was no mention of fraud in the instant case but an error on the face of the register.

Counsel further submitted that there was no evidence especially at the cadaster in the land office to show how Kadoma acquired Plot 9 other than through amalgamation with his plot 21 and that is the reason why the 1st Respondent demanded that parties produce documents. The 1st Respondent's decision to cancel the Kadoma's title for Plot 9 and reverse it to plot 9 was proper and legal.

Issue 3

Whether the Applicant is entitled to the reliefs sought?

Counsel submitted that the applicant is not entitled to the reliefs sought as he has not proved grounds for judicial review in his application. He prayed that the application be dismissed with costs to the 2nd Respondent.

Analysis of court.

Issue 1

Whether the application is amenable for judicial review?

Article 42 of the Constitution provides;

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

In the instant case, the applicant has a right to apply for judicial review against a decision of the 1st Respondent which is a public body hence the application for judicial review.

Issue 2

Whether the application raises ground for judicial review.

Section 91 of the land Act as amended provides that:-

(1) Subject to the Registration of Titles Act, the registrar 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.

(2) The registrar shall, where a certificate of title or instrument—

(a) is issued in error;

(b) contains a misdescription 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, call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.

(3) If a person holding a certificate of title or instrument referred to in subsection (2) fails or refuses to produce it to the registrar within a reasonable time, the registrar shall dispense with the production of it and amend the registry copy and where necessary issue a special certificate of title to the lawful owner.

In the case of *Pastoli Vs Kabale District Local Government Council & Others [2008] 2 EA 300* court noted that;

“in order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety”.

Also in the case of *Arua Kubala Park Operators and Market Vendors' Cooperative Society Limited Vs Arua Municipal Council MC No. 3 of 2016,*

court while relying on the decision of *Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 KB 223* held that:

"judicial review is premised on allegations that a public body; - acted without powers (lack of Jurisdiction); went beyond its powers (exceeded Jurisdiction); failed to comply with applicable rules of natural justice; proceeded on a mistaken view of the law (error of law on the face of the record); or arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it"

In the case of **Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009**. The Court of Appeal delivered itself as follows;

“There is ample authority that the decision-making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed”.

In the instant case, I have carefully perused the affidavit in support of notice of motion paragraph 2, 3, 4, 6, 7 and 8 where the applicant stated that he was summoned on 24th October 2021 by the 1st Respondent to attend a public hearing over a complaint that had been filed by the 2nd Respondents with the purpose of amending the register.

The hearing was scheduled for 26th October 2021 which he attended and he was asked questions. After the said hearing, the 1st Respondent evaluated the evidence and reached a decision that the register should be amended.

In a decision reached on 16 March 2022, the registrar went ahead to correct the registrar and communicated its decision to the applicant.

The Applicant admits in paragraph 3 of the affidavit in chief that the intention of the meeting was to amend the register. I have carefully read the summons that were served on the applicant and found that they were detailed enough and revealed the complaint by the 2nd Respondents and the intention of the hearing. It is also inconceivable to me that the applicant and his lawyer would attend a hearing without knowing about the contention! Then what did he testify about?

I find that the excuse raised by the applicant that he was never served with a copy of the complaint is an afterthought. At all material time the Applicant was aware of the complaint against his late father’s certificate of title.

The hearing referred to under section 91 of the Land Act is not a court hearing that civil procedure Rule would govern. It is clear from the proceedings that the applicant was aware of the case he defended.

The manner in which the proceedings were conducted was procedurally sufficient to constitute an opportunity to be heard or a hearing of the applicant fairly and justly in the circumstances of the present case.

The applicant seems to confuse the right to just and fair treatment in administrative decisions under Article 42 with the right to a fair hearing under Article 28 of the Constitution. The two rights are quite different and distinct since the latter is only applicable before an independent and impartial court or tribunal established by law. Therefore, public hearing or investigations conducted under section 91 of the land Act by the Registrar of Titles cannot be treated as court proceedings in order to require fair hearing as envisaged under Article 28 of the Constitution.

In working out what amounts to ‘justly and fairly’ treatment, the courts are wary of over-judicialising administrative process. They recognize that administrative decision-makers are not courts of law, and that they should not have to adopt the strict procedures like a court or tribunal.

In the final analysis, I find that this application does not raise ground for judicial review to warrant court’s intervention.

Issue 3

Whether the applicant is entitled to the reliefs sought?

Having found that the applicant has not proved that the 1st Respondent acted illegally, irrationality and with procedural flaws in arriving at its decision complained about, he is not entitled to any relief sought.

Conclusion.

This application fails with the following orders.

1. The application is dismissed

2. Considering the nature of this application for judicial review no order as to costs.

Dated, signed, sealed and delivered by email on this **23rd** day of **August 2023**

Emmanuel Baguma

Judge.