

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

MISCELANEOUS CAUSE NO. 203 OF 2022

MICHEAL KIZITO ===== APPLICANT

VERSUS

1. THE COMMISSIONER LAND REGISTRATION
2. NATIONAL FORESTRY AUTHORITY ===== RESPONDENTS

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING.

This application is by notice of motion under Article 28(1), 44 c, section 33, 36(1) 37 and 38(1) of the judicature Act, section 98 of the CPA, rules 3(1) and 6 of the Judicature (Judicial Review) Rules 2009 and order 52 of the CPR seeking for orders that;

1. *A declaration that the directive/decision of the 1st Respondent cancelling the Applicant's Certificate of title without affording the applicant an opportunity to be heard was irrational, illegal, ultra vires, unreasonable and offends rules of Natural Justice.*
2. *A prerogative order of certiorari quashing the administrative decision of the 1st Respondent cancelling the title of the applicant of land comprised in Block 561 Plot 10 land at Kolo.*
3. *An order of prohibition and or an injunction restraining the 2nd Respondent from interfering with the Applicants occupation and usage of the suit land.*
4. *Costs of this application be provided for.*

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

1. I was the registered proprietor of land comprised in Block 561 plot 10 land at Kolo FRV 1104 Folio 13 until sometime in May 2022 when I learnt that the said certificate of title had been cancelled.

2. I purchased that piece of land from the then registered proprietor William Bugingo for value, carried out all due diligence before purchase and effectively after purchase, the said property was transferred into my name and enjoyed peaceful occupation of the same since 2013.
3. I came to learn that the title was cancelled due to a complaint raised by the 2nd Respondent. This complaint was never brought to my attention and neither was I notified or called by the 1st Respondent to respond to the allegations made therein which is illegal and violates my right to ownership of the suit property.
4. I am in danger of being evicted by the 2nd Respondent since he claims ownership of the said piece of land and I have been advised by my lawyers which advice I verily believe to be true that this court has a mandate and authority to issue a writ of prohibition and an injunction against the 2nd Respondent from dealing or interfering with my interest.
5. I am a bonafide purchaser for value without notice and I have never been given a reason why the certificate of title was cancelled to my detriment, I enjoyed quite possession until May 2022 when I learnt of the said actions taken by the 1st Respondent.

In reply, the 1st respondent opposed the application and in affidavit sworn by **Ndahagire Mark Neville a registrar of titles in the office of the 1st Respondent** whose details are on record but briefly states that;

1. The 1st Respondent shall at the earliest opportunity will raise a preliminary objection that the application is barred by limitation period, incompetent and an abuse of court process in respect to the decision made for cancellation of the certificate of title FRV 1104 Folio 13 Kyaggwe Block 561 Plot 10 land at Kolo Mukono District where as the decision was made on 2nd day of November 2017.
2. The 1st Respondent received an application for cancellation of all titles issued in areas gazatted from National Forestry Authority.
3. Subsequently the office of the 1st Respondent issued notices for a public hearing to cancel the titles that had been created out on the land comprised in FRV 1104 Folio 13 Kyaggwe Block 561 Plot 10 land at Kolo Mukono District.
4. The 1st Respondent is duty bound to maintain the register and could not maintain the certificates of title on register whose very creation was tainted by irregularity.

5. That the office of the commissioner issued an order for amendment of the register and was signed on the 2nd day of November 2017 among which included the instant certificate of title FRV 1104 Folio 13 Kyaggwe Block 561 Plot 10 land at Kolo Mukono District.
6. The application is time barred and this court cannot exercise its jurisdiction on the same.

The 2nd Respondent also opposed the application and in an affidavit sworn by **Elizabeth Nalwadda a boundary management supervisor of the 2nd Respondent**, whose details are on record but briefly states that;-

1. The 2nd Respondent is established under section 52(1) of the National Forestry and Tree Planting Act, 2003 as a body corporate and mandated under the said Act among others to develop and sustainably manage all central reserves in Uganda.
2. The applicant's land comprised in Block 561 Plot 10, Land at Kolo forms part of the protected area of Namanve wetland.

In rejoinder, the applicant reiterated his averments in chief but added that his piece of land falls within the land that had earlier been de-gazetted vide statutory instrument No. 1 of 1997 and 63 of 1998. The central reserve partial revocation (Namanve Central Reserve) and the forest (declaration order) reserve respectively. Further that even if the procedure was followed, the said piece of land does not fall under the forest reserve. That the applicant only got to know about the said cancellation in 2022.

Legal representation.

Counsel Musinguzi Herbert represented the applicant, Counsel Ssekabira Moses represented the 1st Respondent while Counsel Okello Sam Blick represented the 2nd Respondent.

At hearing parties agreed to file written submissions and were given schedule within which to file. However, the Respondents did not file written submissions by the time of writing this ruling.

It should be noted that the 1st Respondent in his affidavit in reply sworn by Ndahagire Mark Neville in paragraph 3 and 8 raised a preliminary point of law to the effect that;

The application is barred by limitation period since the decision was made on 2nd November 2017.

It is therefore prudent that this issue should be resolved first.

Court's consideration on the point of law

Upon perusal of the affidavit in support of this application in particular Paragraph 10 Micheal Kizito stated that he learnt about the cancellation of his certificate of title of land comprised in FRV 1104 Folio 13 Kyaggwe Block 561 Plot 10 land at Kolo Mukono District in May 2022.

From court record, this application date on 12th September 2022 was filed in this court on 15th September 2022.

In paragraph 3 and 7 of the 1st Respondent's affidavit in reply sworn by Ndahagire Mark Neville, he stated that the decision to cancel the titles that had been created on land comprised in FRV 1104 Folio 13 Kyaggwe Block 561 Plot 10 land at Kolo Mukono District was made on 2nd November 2017.

Rule 5(1) of the judicature (judicial Review) rules 2009 as amended provides that;-

“An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made”.

In the case of **Madhvani International SA Vs The Attorney General SCCA No. 23 of 2010** court cited with approval the dictum of **Lord Greene MR in Hilton Vs Sulton Steam Laundry [1946]1 KB at page 81** where it was observed that;-

“but the statute of limitation is not concerned with merits. Once the axe falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course to insist on his strict rights”.

Further, the Court of Appeal in Uganda has held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. See **Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd Civil Appeal No. 31 of 2000.**

In the case of **Re Application by Mustapha Ramathan for Orders of certioarri, prohibition and injunction, Civil Appeal No. 25 of 1996** the court of appeal observed that;-

statutes of limitation are strict and inflexible enactments. The overriding purposes is interest reipublicae sit litum. . meaning that litigation shall automatically be stifled after a fixed length of time irrespective of the merits of the particular case’.

In the case of **Muhumuza Ben Vs Attorney General & 2 ors Misc. Cause No. 212 of 2020** court held that;

“court ought not to consider stale claims by persons who have slept on their rights. An application brought by way of judicial review cannot be entertained if presented after lapse of a period fixed by limitation legislation”.

In this instant application, the applicant allegedly stated that he came to know to about the decision by the 1st Respondent cancelling his certificate of title in May 2022 while the 1st Respondent stated that the decision to cancel the titles was on 2nd November 2017.

I have perused the pleadings and according to annexure A to the 1st applicant’s affidavit in reply, indeed the decision was made on 2nd November 2017.

It is therefore not in dispute that the decision was made on 2nd November 2017 and the application was filed on 15th September 2022.

Even if court was to believe the applicant that he came to know about the decision in May 2022 and he filed this application on 15th September 2022 it would mean that he filed after 4 months. This means that he would still be out of time.

In this case, the applicants did not even apply for extension of time. A court of law cannot extend time without being moved by a party as court does not act for the parties, but counsel.

There is no reasonable court or tribunal that can believe or be convinced by the applicant that a decision that was made on 2nd November 2017 over his property he had been occupying since 2013 he came to know about the same in May 2022. This was nothing but a pack of lies, in any case even if one was to believe his lies, he would still be out of time.

Matters of limitation in judicial review are mandatory and in this court finds no reason for extending time in any case it was not even applied for.

In the view of the above consideration, I hold that this application is barred by the law of limitation and I don't see any reason to proceed with the merits of the application.

Accordingly, this application is stuck of with no orders as to costs.

Dated, signed, sealed and delivered by email on this **24th** day of **August 2023**

Emmanuel Baguma

Judge.