THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. I67 OF 2022

IN THE MATTER OF THE REPORT OF THE PARLIAMENTARY ADHOC COMMITTEE ON THE NAGURU - NAKAWA LAND ALLOCATIONS

AND

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDERS OF CERTIORARI, PROHIBITION AND DECLARATIONS BY WAY OF JUDICIAL REVIEW.

I. MASTER LINKS UGANDA LIMITED

2. ARAB OIL SUPPLIERS AND EXPLORATION LIMITED :::::::: APPLICANTS

VERSUS.

THE ATTORNEY GENERAL :: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under Articles 26, 42 and 50 of the Constitution of the Republic of Uganda 1995; Sections 33, 36 and 38 of the Judicature Act Cap 13; Section 91 of the Land Act Cap 277; Sections 59 and 176 of the Registration of Titles Act Cap 230; Rules 3, 6 and 7 of the Judicature (Judicial Review) Rules S.I No. 11 of 2009 and Rules 3A, 7A and 7B of the Judicature Judicial Review (Amendment) Rules 2019; for various declarations and for orders of certiorari, prohibition, general and punitive damages, plus costs of the suit. The Applicants' claim arises out of the appointment and conduct of the Parliamentary Ad-hoc Committee of the Naguru-Nakawa Land Allocations (hereinafter to be referred to as **"the subject**

Ad-hoc Committee"), the subsequent Report containing findings, recommendations, directives and conclusions of the Committee, and the amendments and resolutions passed on the floor of Parliament by the Plenary of Parliament in its sitting of 18th May 2022.

[2] The back ground and grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit sworn by **Mr. Bamwine Quillino**, one of the Directors of the 1st Applicant and under a written authority of the 2nd Applicant. Briefly, the grounds are that the 1st Applicant is the registered proprietor of property comprised in **LRV KCCA 555 Folio 12 Plot 8-12**, Naguru Road, Kampala City measuring approximately 1.2140 Hectares while the 2nd Applicant is registered proprietor of property comprised in **LRV KCCA 555 Folio 14 Plot 6** Naguru Avenue, Kampala City measuring approximately1.6190 Hectares. The Applicants claim that they lawfully acquired the above named properties from the Uganda Land Commission. The Applicants are among the persons directly aggrieved and affected by the Report of the Parliamentary Ad-hoc Committee of the Naguru-Nakawa Land Allocations (**the subject Ad-hoc Committee**) together with its amendments adopted by the House which adversely affect their proprietary interest in the said properties.

[3] It is stated that the Applicants and other persons were subjected to investigations concerning acquisition of the Naguru- Nakawa land by the subject committee; the committee made a report that was adopted with several amendments by Parliament on 18th May 2022 with recommendations and resolutions, among others, for termination of the Applicants' leases, cancellation of their certificates of titles, and return of the land to its original use. It is averred by the Applicants that the appointment of the Ad-hoc committee and the procedure adopted by the committee were irrational, ultra vires, illegal, made without jurisdiction, contrary to the rules of natural justice

and tainted with procedural impropriety which ought to be quashed and prohibited from enforcement. The Applicants finally averred that it is in the interest of justice that the application be allowed.

[4] The Respondent opposed the application through an affidavit in reply deposed by **Adolf Mwesige Kasaijja**, the Clerk to Parliament and Secretary to the Parliamentary Commission, who stated that the appointment of the Ad-hoc Committee, its inquiry, deliberations and report, and the subsequent resolution of Parliament adopting the impugned report with amendments, were lawful and in compliance with the Constitution of the Republic of Uganda and the Rules of Procedure of Parliament. The deponent stated that upon receipt of a petition to the Speaker of Parliament and owing to several media reports, an Ad-hoc committee was lawfully appointed under Rule 191 of the Rules of Procedure of Parliament to investigate the Naguru-Nakawa land allocations.

[5] The deponent stated that the Applicants and other allocates were invited to appear before the Committee to testify and present the necessary documents which invitations were honored and the Applicants' request for more time to prepare and present all documents was also granted. He stated that the Committee was properly constituted at all times, its report was signed by more than a third of the members before being tabled, its recommendations were made within the scope of the terms of reference and were arrived at in a procedurally proper and rational manner and Parliament was acting within its oversight mandate over government. The deponent further averred that the findings and recommendations in the report and subsequent resolutions of the House are still subject to consideration by the Executive in order to assess the propriety of their implementation hence the current application is prematurely brought before court.

[6] The Applicants filed an affidavit in rejoinder whose contents I have also taken into consideration.

Representation and Hearing

[7] At the hearing, the Applicants were represented by **Mr. Ambrose Tebyasa** and **Mr. Ola Gabriel** while the Respondent was represented by **Mr. Sam Tusubira**, a State Attorney from the Chambers of the Attorney General. It was agreed that the hearing proceeds by way of written submissions which were duly filed by Counsel and have been reviewed and taken into consideration in the course of determination of this matter.

Issues for Determination by the Court

[8] 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) What remedies are available to the parties?

Resolution of the Issues by the Court

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

Submissions by Counsel for the Respondent

[9] Counsel for the Respondent relied on paragraphs 17, 23 and 24 of the affidavit in reply to the effect that the committee report is awaiting consideration by the Executive to assess the propriety of its implementation and submitted that the application before this court is premature because the Report contains only recommendations which are yet to be implemented and the same can only be actionable once acted upon by Cabinet. Counsel submitted that in these circumstances, the remedy of Certiorari is not available to the Applicants since it is only available to a party affected by a decision that has been reached in an illegal, irrational and procedurally improper manner.

Counsel argued that the remedy cannot issue where there are mere recommendations, suggestions and observations. Counsel relied on the case of ***Wakiso Transporters Tour & Travel Ltd & 5 Others vs Inspector General of Government & 3 Others, HCMC No. 53 of 2010*** which cited ***Dott Services Ltd vs Attorney General & Another, HCMC No. 129 of 2009*** for the above argument.

[10] Counsel further cited Rule 7A (1) (b) of the Judicial Review (Amendment) Rules 2019 and the case of ***Sewanyana Jimmy vs Kampala International University HCMC 207/2016*** to the effect that for an application to be amenable for judicial review, the aggrieved person must have exhausted the existing remedies available within the public body or under the law. Counsel submitted that Rule 222 of the Rules of Procedure of Parliament provides a remedy of reconsideration of a decision of Parliament upon a substantive motion for reconsideration moved under notice of not less than 14 days. Counsel concluded that the Applicants had not exhausted the said remedy and prayed that, on this ground, the application be dismissed.

Submissions by Counsel for the Applicants

[11] Counsel relied on *Section 36 (1) of the Judicature Act Cap 13, Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules, 2009 and Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019* to submit that the Applicants have demonstrated that they are aggrieved with the recommendations and actions of the Parliamentary Ad-hoc Committee which in essence affect their property rights protected under Article 26(1) of the Constitution. Counsel submitted that the Applicants challenge the manner in which the Ad-hoc committee handled the matters involving the Applicants' land and reached decisions and recommendations which, if implemented, would have the effect of depriving the Applicants of their right to property.

[12] In response to the submission by the Respondent's Counsel, Counsel for the Applicants, in rejoinder, submitted that the findings and recommendations of the Committee constitute a decision and the Court has jurisdiction to issue a writ of Certiorari to quash findings and recommendations contained in a Report of a Committee of Parliament if the same are tainted with illegality or were arrived at in a manner that offends principles of natural justice. Counsel relied on the decision in ***Ssekatawa vs Attorney General & 2 Others (Miscellaneous Application 293 of 2017) [2020] UGHCCD 2 (14 February 2020)***. On the submission regarding failure to exhaust existing remedies, Counsel for the Applicants relied on paragraphs 33 and 34 of the affidavit in support of the application to the effect that the Applicants through their lawyers had petitioned Parliament for review and reconsideration of the Report of the Ad-hoc Committee and the resolution of Parliament but never received any response. Counsel submitted that the Applicants had exhausted all existing remedies available and prayed that Court finds that the Applicants were justified to commence the application for judicial review.

Determination by the Court

[13] Rule 5 of the Judicature Judicial Review Amendment Rules, No. 32 of 2019 introduces Rule 7A into the principal rules, which lays out the factors to consider in handling applications for judicial review. It provides as follows;

"7A. Factors to consider in handling applications for judicial review

(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."

[14] It follows, therefore, that for a matter to be amenable for 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. See: **Ssekaana Musa, Public Law in East Africa, P.37 (2009) Law Africa Publishing, Nairobi**. It is therefore, 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. 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 officers subject of his/her challenge did not follow due process in making the respective decisions or acts and that, as a result, there was unfair and unjust treatment of the applicant; which is likely to have an effect on other members of the public.

[15] In the present case, there is no dispute as to whether the subject Ad-hoc Committee and the Parliament of Uganda are public bodies whose decisions are liable to the court's power of judicial review. It is also not disputed that the subject of challenge by the Applicants involve public law matters. The Respondent, however, raised two contentions while challenging the amenability of the present application for judicial review. The first is that the matters raised by the Applicants do not amount to a decision by the subject Committee or by Parliament but were merely recommendations, suggestions and observations which are not amenable for judicial review. Counsel for the Respondent argued that the Committee Report, the subject of this application, has not been considered by the Executive with the effect that no decision has been taken to make the report actionable.

[16] The above argument by learned Counsel for the Respondent is misconceived in my view. It is also a dangerous argument since it has the effect

of trivializing the institution of Parliament, which is an independent arm of the State. The import of Counsel's argument is that when Parliament appoints a committee which conducts inquiries, makes findings and recommendations; which are adopted by Parliament through a resolution; such do not amount to a decision unless and until the said resolution is discussed by Cabinet and action is taken upon it. This is a totally wrong view since it carries the import that Parliament through its resolutions is incapable of making decisions. The correct position is that when Parliament passes a resolution, it becomes a decision that is binding on all persons and authorities; unless appropriately impeached under the law.

[17] Regarding the conduct and report of a committee of Parliament such as the present Ad-hoc Committee, I had occasion to deal with the same matter in the case of ***Mohammed Alibhai versus Attorney General, HCMC No. 217 of 2021*** wherein I stated that in view of evidence that the Sub-Committee in that 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. Secondly, after producing the report, the same was placed before the Committee of the whole House and was passed by Parliament. It followed, therefore, that the resolution of Parliament adopting the report was binding on all persons and authorities in Uganda unless otherwise set aside or modified through a lawful process. The facts and circumstances in the above cited case are in *pari materia* with the present dispute and the above finding perfectly fits the present case.

[18] The decisions cited by the Respondent's Counsel in ***Wakiso Transporters Tour & Travel Ltd & 5 Others vs Inspector General of Government & 3 Others, HC M.C No. 53 of 2010*** and ***Dott Services Ltd vs Attorney General & Another, HC M.C No. 129 of 2009*** were made in different contexts. In the

Wakiso Transporters case, the decision of the Court was based on the nature of recommendations that were before the Court; which the Court analyzed and found that there were no decisions in them that were capable of being enforced. Similarly, the ***Dott Services Ltd*** case was based on the nature of resolutions that were before the Court. I do not understand that decision as setting a general principle of the law that a report containing recommendations by a public body does not amount to a decision capable of being subjected to judicial review. Indeed, if such is the position the Court intended to communicate in that decision, I would respectfully depart from such an opinion. Be that as it may, I am able to discern that the decisions in the above cited cases were based on the particular facts and circumstances of those cases which are clearly distinguishable from those of the present case.

[19] In the premises, therefore, the argument by the Respondent's Counsel in that regard bears no merit. I find that the present dispute is clearly amenable for judicial review.

[20] The other argument by Counsel for the Respondent was that this application is premature before the Court since the Applicants did not exhaust available remedies in accordance with Rule 222 of the Rules of Procedure of Parliament. I have before stated in a couple of earlier decisions, namely, ***John Ssentongo vs Commissioner Land Registration & Others, HCMC No. 13 of 2019*** and ***Oyiki Sirino & Ors vs Kampala University HCMC No. 129 of 2022*** that the rule on exhaustion of existing remedies is a rule of discretion on the part of the court and the exercise of the discretion is stricter where the challenge by the aggrieved party is premised on merits of the decision rather than the decision making process. Where the challenge is directed against the decision making process, the judicial review option may be more preferable given the particular circumstances of a given case.

[21] On the case before me, it was shown by the Applicants that in line with the Rules of Procedure of Parliament, they petitioned Parliament for review through their lawyers twice through correspondences; one dated 21st June 2022 from M/s Mwesigwa Rukutana Advocates and received by Parliament on 22nd June 2022; and another from M/s Tumusiime Kabega & Co. Advocates dated May 31st and received on 16th June 2022; but the Applicants got no response. Rule 222 of the Rules of Procedure of Parliament 2021, relied upon by Counsel for the Respondent, states as follows;

"Reconsidering a decision of the House

(1) It is out of order to attempt to reconsider a specific question upon which the House has come to a conclusion during the current Session.

(2) Notwithstanding sub rule (1), the House may reconsider its decision upon a substantive Motion for the reconsideration, moved under notice of not less than fourteen days."

[22] It is clear from the above rule that reconsideration of a matter upon which Parliament has made a decision is purely a discretionary affair and can only be exercised by a member of the House moving a substantive motion. None of the Applicants is a member of Parliament. It means therefore that if the Applicants were to take advantage of the above cited provision, they could only do so by petitioning the Speaker of Parliament to occasion the House to review its resolutions. According to the evidence, this is exactly what the Applicants did and they received no response. It is not open to the Respondent, therefore, to argue that the Applicants did not exhaust any available or existing remedy. The position of the law is that the alternative remedy ought to be legally provided for and more effective than judicial Review. See: ***Leads Insurance Company Ltd vs Insurance Regulatory Authority, CACA No.237/15***. In the circumstances of the present case, the alternative remedy was restricted to the Applicants moving the public body to conduct a review of its own decision which step the Applicants took. The application for judicial review is therefore

appropriate and the argument that it was brought prematurely is therefore without merit.

[23] In answer to the first issue, therefore, I have found that the application is amenable for judicial review and is properly before the Court.

Issue 2: Whether the application discloses any grounds for judicial review?

[24] Judicial review is concerned not with the decision but with the decision making process. Essentially, 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 standards of legality, fairness and rationality. The duty of the court, therefore, is to examine the circumstances under which the impugned decision or act was done so as to determine whether it was fair, rational and/or arrived at in accordance with the rules of natural justice. See: ***Attorney General vs Yustus Tinasimiire & Others, Court of Appeal Civil Appeal No. 208 of 2013*** and ***Kuluo Joseph Andrew & Others vs The Attorney General & Others, HC MC No. 106 of 2010***.

[25] *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 a decision and that, as a result, there was unfair and unjust treatment".* This flows from the provision under Article 42 of the Constitution of the Republic of Uganda which provides that 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"*.

[26] It follows, therefore, that under the law, the court may provide specific remedies under judicial review where it is satisfied that the named authority has acted unlawfully. 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 (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: ***ACP Bakaleke Siraji v Attorney General, HCMC No. 212 of 2018.***

[27] In the instant case, the Applicants allege that the impugned report of the subject Ad-hoc-Committee, its adoption by Parliament with amendments and the resolutions passed by Parliament were made illegally, irrationally, and/or with procedural impropriety or unfairness. I will consider each ground under a separate head.

Allegations based on the Ground of Illegality

[28] Illegality has been described as the instance when the decision-making authority commits an error of law in the process of taking the 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. In the famous case of ***Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 375***, **Lord Diplock** made the following statement, that has often been quoted, on the subject:

> ***"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."

[29] 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 the legal power are said to be made *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. In ***Dr. Lam – Lagoro James vs Muni University, HC M.C No. 007 of 2016***, **Mubiru J.** held that decisions classified as illegal include, among others, decisions which are not authorized; decisions taken with no substantive power; or where there has been a failure to comply with procedure.

Allegation of Ultra Vires/ Acting without Jurisdiction

Submissions by Counsel for the Applicants

[30] It was submitted by Counsel for the Applicants that by hearing and determining allegations of fraud and ordering for cancellation of certificates of title, the Ad-hoc Committee bestowed upon itself judicial power which is vested in the High Court under the law. Counsel referred Court to paragraph 9 of the Applicants' affidavit in support and Term of Reference No. 5 which was to establish any possible fraudulent activities or flaws committed in the disposal/ allocations of land in Nakawa – Naguru Estate. Counsel pointed out that at page 29 of the Report, the Commitee made a recommendation that the certificates of title be cancelled for fraud and flaws in the allocation of land. Counsel relied on the decisions in ***Hilda Wilson Namusoke & 3 Others [As Administrators of the Estate of the late Nambi Magdalene Scot] vs Owalla's Home Investment Trust & Commissioner Land Registration, SCCA No. 15 of 2017*** and ***Abid Alam & Anor v. AG, Constitutional Petition No. 0043 of 2017***, to the effect that the power to order for cancellation of certificates of title is vested in the High Court.

[31] Counsel further submitted that when the report of the Ad-hoc Committee was debated on the floor of Parliament, the House made an amendment and adopted a resolution for cancellation of the entire transaction because it was tainted with fraud and irregularities. Counsel argued that in reaching this conclusion, both Parliament at its sitting on 18th May 2022 and the Ad-hoc Committee, had no basis and competence to establish fraud; and not only did they act contrary to the law but also usurped powers to investigate fraud and recommend cancellation of titles, which powers, they didn't have. Counsel argued that in that regard, Parliament constituted itself into a court of law for purposes of pronouncing itself on the alleged fraud and making findings thereon which constituted an apparent illegality. He concluded that a decision reached in exercise of jurisdiction not vested by law cannot be left to stand.

Submissions by Counsel for the Respondent

[32] In reply, it was submitted by Counsel for the Respondent that despite the recommendation for cancellation of the Applicants' leases and certificates of title, the relevant institutions will take appropriate action whereby the Applicants would still be given opportunity to present their case regarding how they acquired their leases and the court will determine whether to cancel the same or not.

Determination by the Court

[33] The thrust of the argument by the Applicants' Counsel under this allegation is that the recommendations contained in the report of the Ad-hoc Committee, their amendment and adoption by the House and one of the resolutions passed by Parliament had the effect of depriving the Applicants, being registered proprietors of land, of their interest in land through cancellation of their leases and certificates of title. *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 an 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 that power."

[34] Under Section 176 of the RTA, 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) 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] vs Owalla's Home Investment Trust & Commissioner Land Registration, SCCA No. 15 of 2017***.

[35] On the matter before the Court, as pleaded by and submitted for the Applicants, the Ad-hoc Committee made a recommendation for cancellation of leases belonging to the Applicants, among others, for reasons of fraudulent dealing, influence peddling and other irregularities. (See pages 19 – 23 of

Annexure I(1) to the affidavit in support of the application.) When the report containing the recommendations was taken to the floor of the House, Parliament adopted the report with amendments. In respect to this particular matter, it was resolved that the entire transaction between the Uganda Land Commission (ULC) and the persons or entities in the Applicants' category be cancelled; that all land allocations, leases and certificates of titles be cancelled. According to the extract of the Resolutions of Parliament at its sitting on 18th May 2022 (Annexure Q1 to the Supplementary affidavit of the Applicants), resolution No. 1 reads:

> *"Given the irregularities that surrounded the allocation of the Naguru – Nakawa land to the so-called investors, all the titles already issued should be cancelled and the entire land reverts to Government".*

[36] It should be noted that at the Committee stage and at the floor of Parliament, the alleged irregularities included fraud and influence peddling. The result of the foregoing is that unless the resolution by Parliament is impeached, the Applicants stand to suffer deprivation of land that is registered in their names. There is evidence by way of a letter (Annexure Q to the Applicants' supplementary affidavit) that the said resolutions were forwarded to the Prime Minister/ Leader of Government Business for action and she/he was expected to furnish Parliament with an action taken report in accordance with Rule 220 of the Rules of Procedure of Parliament. Rule 220 of the Rules of Procedure provides as follows;

> ***"Action taken Reports***
>
> *The minister shall submit to parliament an action taken report detailing what actions have been taken by the relevant ministry following the resolutions / recommendations of parliament made by parliament."*

[37] The implication, therefore, is that Cabinet is expected to discuss the implementation of the resolutions. It should be noted that at is this level, the

resolutions cannot be altered or reviewed unless they are taken back to Parliament and a formal motion for review is tabled in accordance with rule 222 of the rules of procedure. As such, what is expected from Cabinet or the Executive is the implementation of the resolutions. It is therefore true that if the impugned resolution is implemented, it has the effect of depriving the Applicant of their registered interest in the land in issue. This would be contrary to the law and would have been achieved through ultra vires means.

[38] Even if I were to consider the argument by the Respondent's Counsel that the matter may later be taken to court for determination, the presence of a resolution by Parliament and a directive by the Executive would run contrary to the provision under Article 128 of the Constitution which provides for independence of the Judiciary. Article 128(1) of the Constitution expressly provides that in the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority. Adjudicating a matter where a resolution by another arm of the State has already directed cancellation of certificates of title would be contrary to the above provision.

[39] In the premises, the Applicants have established that the impugned recommendation by the Ad-hoc Committee and the resolution by Parliament directing the cancellation of leases and certificates of title for land belonging to the Applicants were made ultra vires the power of Parliament. The same are therefore illegal and impeachable through judicial review.

Allegation of Illegal Appointment of the Ad-hoc Committee and Illegal Exercise of Powers of the of the Physical Infrastructure Sectoral Committee.

[40] Counsel for the Applicants challenged the manner in which the Ad-hoc Committee was appointed and argued that it was appointed illegally in view of

existence of the Physical Infrastructure Sectoral Committee which was mandated under rule 187(2)(f) of the Rules of Procedure of Parliament to handle the matters in issue. I have taken note of the fact that rule 191 of the Rules of Procedure of Parliament permits Parliament to appoint Ad-hoc Committees. I have also noted that at the time the Physical Infrastructure Sectoral Committee dealt with the issue of the Naguru-Nakawa Land Allocations, the Applicants had not obtained leases over the land in issue and the same had not been registered in their names. As such, there were certain developments between the time the Physical Infrastructure Sectoral Committee conducted an inquiry in the matter and made a report on the one hand, and when the Ad-hoc Committee was appointed and made the impugned report on the other hand.

[41] That being the case, it is clear to me that Parliament was justified in finding need to conduct another investigation. As to whether the subsequent investigation would be done by the same committee (the Physical Infrastructure Sectoral Committee) or by another committee (the Ad-hoc Committee) was really a matter of discretion on the part Parliament. I am alive to the provision under rule 191 of the Rules Procedure of Parliament on considerations for appointment of ad-hoc committees. My view, however, is that even though the matter fell under the jurisdiction of a particular sectoral committee, Parliament had the discretion to engage another committee given that some developments had taken place since the earlier work of the sectoral committee. I have not found any illegality in the way the Ad-hoc Committee was appointed or in its handling of a matter that falls within the jurisdiction of another sectoral committee. What was important, in my view, is that the Ad-hoc Committee had the mandate of Parliament, which it clearly had. These allegations based on the ground of illegality therefore fail.

Allegation of interfering with the Legal Mandate of the Uganda Land Commission (ULC)

[42] It was submitted by Counsel for the Applicants that the Ad-hoc Committee interfered with the powers of the ULC by setting pre-qualification requirements for allocation of public land at Nakawa-Naguru. Counsel argued that the Uganda Land Commission as an independent body has the legal mandate to set and waive its own conditions and requirements for allocation of public land.

[43] According to the record, it is not true that the Ad-hoc Committee set its own pre-qualification requirements for the allocation of the Nakawa-Naguru land. According to the minutes that were relied upon by the Committee, ULC had set its requirements for allocation of land and the Committee relied on the same list of requirements and came to the conclusion that the criteria were not followed to the letter without evidence of any minute authorizing alteration of the said requirements. I do not find any issue with the Ad-hoc Committee holding the ULC accountable for not following their own procedure or criteria. It ought to be appreciated that one of the cardinal roles of Parliament is to perform oversight over all institutions of government. Demanding transparency from a government agency cannot, in my view, amount to interference with its legal mandate. I have therefore found no instance of illegality in that regard.

[44] In all, on the ground of illegality, I have found one instance of illegality concerning the conduct of the Ad-hoc Committee and of Parliament which was outside legal mandate and therefore ultra vires. The other allegations in that regard have not been made out.

Allegations based on the Ground of Procedural Impropriety

[45] According to **Lord Diplock** in ***Council of Civil Service Unions & Others vs. Minister for the Civil Service [1985] AC 374***, "procedural impropriety" has been defined to mean ***"the failure to observe basic rules of natural***

justice or failure to act with procedural fairness toward the person who will be affected by the decision." 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 Vs. Muni University (HCMC No. 0007 of 2016***).

[46] 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***.

[47] On the case before me, the Applicant raised a number of complaints alleging impropriety in the way the Adhoc-Committee and Parliament conducted their proceedings. However, I note that some of the allegations raised under this leg are the similar in substance with the allegations upon which I have pronounced myself under the ground of illegality. I will therefore make comment on each such ground.

[48] Counsel for the Applicants submitted that there was failure to adhere and observe the Rules of Procedure of Parliament of Uganda, 2021 in that the manner in which the Ad-Hoc Committee was appointed was flawed. My finding over this matter herein above fully settles this contention. Counsel for the Applicant also argued that the conduct of the House of amending the report of

the Ad-hoc Committee and resolving to cancel the entire transaction was done in a manner that was contrary to the rules of natural justice. Given that the relevant resolution has been found to have been made ultra vires, this claim becomes immaterial.

[49] The only new allegation under this head was the claim that the Ad-hoc committee proceeded without quorum. Counsel for the Applicants stated that on the sitting of 26/4/2022 when the 2nd Applicant appeared before the committee, there were only two members, Hon. Dan Kimosho (Chairperson) and Hon. Kateshumbwa Dickson (Member), contrary to Rule 197 of the Rules of Procedure of the 11th Parliament which provides the quorum of a committee of the house to be one third of its members required for the purposes of voting. Counsel submitted that by simple calculation, since the membership of the committee was nine members, the quorum for the Ad-hoc committee would be four members at each sitting. Counsel submitted that the proceedings of that day formed part of the Report with the effect that all proceedings, conclusions and recommendations made by a committee that is not properly constituted in accordance with the law are a nullity. Counsel relied on the case of ***Komakech & Anor v Akol & 2 Ors (Civil Appeal 21 of 2010) [2012] UGSC 10.***

[50] In reply, Counsel for the Respondent relied on Rule 204(1) of the Rules of Procedure 2021 and submitted that the quorum of a committee of Parliament is only required to be one third of its members at the point of voting on the findings to be presented to the House. Counsel stated that the signature sheet attached indicates that the committee was comprised of nine members of which five appended their signatures.

[51] The relevant rule on quorum of committees of Parliament is Rule 197 of the Rules of Procedure of Parliament 2021 which provides that;

(1) Unless the House otherwise directs or these rules otherwise provide, the quorum of a Committee of the House shall be one third of its members and shall only be required for the purposes of voting.

(2) The number of members required to form the quorum of every committee under sub rule (1) shall be in addition to the Chairperson or any other member presiding.

[52] I have looked at the minutes under Annexure J to the affidavit in support for the committee meeting of 26/04/2022 and I note that there was no voting on that day. In line with the above cited provision under the rules of procedure of Parliament, there is no way the proceedings of that day could affect the report of the Ad-hoc Committee. No procedural impropriety has, therefore, been established in that regard or at all.

Allegations based on the ground of Irrationality

[53] Under judicial review, irrationality refers to arriving at a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it as per **Lord Diplock** in ***Council for Civil Service Unions (supra)***. In ***Dr. Lam –Larogo (supra)*** the court held that in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

Submissions

[54] It was submitted by Counsel for the Applicants that the action by the Ad-hoc Committee and the Parliament of recommending for cancellation of the Applicants' certificates of title after they had complied with the discretionary requirements set by Uganda Land Commission (ULC) was irrational as such

could only be arrived at if the Applicants had breached and/or failed to fulfill the covenants and conditions in the lease agreements, which still could only have been exercised by the lessor. Counsel argued that the reasons for recommending cancellation emanated from the criteria the Applicants were to follow when applying for allocation of the subject land and were applicable before the Applicants were offered the leases. Counsel stated that the Applicants had actually complied with the said requirements and had provided sufficient explanation where any of those requirements was not readily available.

[55] Counsel for the Applicants further argued that the ULC obtains and exercises it powers independently from ***Article 239*** of the Constitution of the Republic of Uganda and ***Sections 46 and 53 of the Land Act Cap, 227.*** As such, it had every right to either follow the criteria strictly or with reasonable modifications and to allow room for acceptable explanation or even defer some of the items listed on the criteria because the same did not emanate from a statute to warrant strictly following the same to the letter. Counsel submitted that issuing a recommendation for cancellation of leases already accepted and premiums paid on a list of requirements which were discretionarily created by ULC when it had itself already offered leases to the Applicants, was clearly irrational.

[56] In response, it was submitted by Counsel for the Respondent that the Committee in arriving at its findings and recommendations based itself on the review of documents and minutes of the ULC that showed that the Applicants did not comply with the set criteria for allocations of the land. Counsel stated that the Committee only made recommendations and the relevant institutions would take appropriate action where the Applicants would still be given a right to present their cases and the court would determine.

Determination by the Court

[57] The point raised by the Applicant's Counsel has largely been dealt with by the Court under the previous two grounds. Suffice, however, to emphasize that in view of the oversight role of Parliament over exercise of power by government organs, Parliament had the power and mandate to question why the ULC had not followed the very criteria set by itself and in case of adjustment, the reasons for such adjustment. If the impugned recommendation had been made lawfully, I would not see any irrationality in the way the Committee and the Parliament handled the matter. The ground of irrationality has therefore not been made out.

Issue 3: What remedies are available to the parties?

[58] In view of the findings above, the application by the Applicants has succeeded on one ground; of the impugned decision having been made ultra vires and thus illegally. Such is sufficient ground to impeach the affected part of the report and resolutions of Parliament. In that regard, therefore, the Applicants are entitled to a declaration that the recommendation of the Parliamentary Ad-hoc Committee on the Naguru – Nakawa Land Allocations, its adoption with amendment by the Parliament, and the resolution of Parliament to the effect that the leases and certificates of titles issued to the Applicants over the subject land should be cancelled and the subject land reverts to Government, were made ultra vires and thus illegally.

[59] Consequently, a Writ of Certiorari doth issue quashing the part of the report of the Ad-hoc Committee on the Naguru – Nakawa Land Allocations and the resolution of Parliament containing the matter subject of the above declaration and in as far as it relates to the Applicants. An order of Prohibition also issues barring the Respondent, any institution, organ or agency of

Government from enforcing the specific impugned recommendation and resolution of Parliament against the Applicants.

[60] The Applicants, in addition, prayed for general and punitive damages. 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 … 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 to 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."*

[61] In this regard, the agreed position of the law is 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 versus Bank of England (3) [3003]2 AC 1***; ***X (Minors) versus Bedfordshire County Council [1995]2 AC 633*;** and ***Fordham, Reparation for Maladministration: Public Law Final Frontiers (2003) RR 104 at page 104 -105***.

[62] On the case before me, although it has been established that the decision affecting the Applicants was reached illegally, I have not found any compelling grounds or evidence justifying award of damages in this public law matter. I have found neither evidence of breach of statutory duty nor any particular misfeasance in public office. In the premises, I have not found any justification for grant of any orders for damages in addition to the remedies in judicial review set out herein above.

[63] Regarding costs, in line with Section 27 of the Civil Procedure Act Cap 71, the Applicants are entitled to costs of the application. I accordingly award the costs to the Applicants against the Respondent.

It is so ordered.

Dated, signed and delivered by email this 14th day of April, 2023.

Boniface Wamala
JUDGE