

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MASINDI**

**HCT-12-CV-CR-0015-2016**

- 1. THE OMUKAMA OF BUNYORO KITARA }  
2. HOIMA SUGAR LIMITED }.....APPLICANTS**

**VERSUS**

- 1. THE ATTORNEY GENERAL }  
2. THE COMMISSIONER LAND REGISTRATION }.....RESPONDENTS  
3. HON. PERSIS NAMUGANZA }**

**BEFORE HON. JUSTICE RUGADYA ATWOKI**

**RULING**

This is an application for judicial review brought under Articles 28(1), 42, and 50 of the Constitution, and Ss. 36 and 38 of the Judicature Act, plus Rules 3 – 7 of the Judicature (Judicial Review) Rules.

The application seeks the following.

- a) A declaration that the decision of the 3<sup>rd</sup> respondent contained in the letter dated September 9, 2016 directing the 2<sup>nd</sup> respondent to cancel the 1<sup>st</sup> and 2<sup>nd</sup> applicants titles for land comprised in Freehold land HQT 876 Folio 18 Buhaguzi Block 2 Plot 216 land at Kywngwali and LRV HQT 887 Folio 12 Buhaguzi Block 2 Plot 216 at Kyangwali respectively by close of the same day September 9, 2016 is ultra vires the powers of the 3<sup>rd</sup> respondent, illegal and irrational.
- b) An order of certiorari to call and quash the letter directing the Commissioner Land Registration to cancel the applicants titles aforesaid dated September 9, 2016.

- c) A declaration that the decision of the Commissioner for Land Registration to cancel the 2<sup>nd</sup> applicants title on 13. 9. 2016 vide instrument No. 00024392 at 4.45 pm was irrational, unlawful and void.
- d) An order of mandamus directing the Commissioner for Land Registration to desist from acting irrationally and to reinstate the 2<sup>nd</sup> applicant on the register in respect of land comprised in LRV HQT 887 Folio 12 Buhaguzi Block 2 Plot 216 at Kyangwali.
- e) An order of a permanent injunction restraining the 3<sup>rd</sup> respondent implementing the impugned decision in the letter dated 9.9.2016 and the Commissioner for Land Registration from effecting the changes in the register of the land aforesaid and from cancelling the applicants certificate of title.
- f) General damages.
- g) Costs.

The application was supported by the affidavit of one Kahiigwa Rujumba Willy, the Minister of Forests and Environment of the 1<sup>st</sup> applicant dated 29.9.2016 with several annextures.

The brief background to the application is thus. The 1<sup>st</sup> applicant is the holder of a certificate of title in respect of suit land. (Annexure A). He leased the same or part of it to the 2<sup>nd</sup> applicant, who has since commenced preparing the same for sugar cane plantation. (Annexure B). Some environmentalists and National Forestry Authority took issue with the above claiming that the suit land was part of Bugoma Forest, and asked the Commissioner for Land Registration (hereinafter referred to as the 2<sup>nd</sup> respondent) to cancel the certificate of title. The 2<sup>nd</sup> respondent issued notice of intention to so cancel the said certificates of title, and presumably acting under provisions of S.91 of the Land Act, on 1.9.2016, he issued notice to the applicants to appear for what was termed a public hearing at which objections if any, to the intended cancellation would be raised. That public hearing was scheduled for 26.9.016. (Annexure D).

The National Forestry Authority filed a suit challenging the title of the applicants and seeking orders to have the same cancelled. HCCS No. 31 of 2016.

The applicants filed an application for temporary injunction seeking to halt the intended cancellation of the applicants' titles. MA No. 72 of 2016.

On 9.9.2016 the 3<sup>rd</sup> respondent, the State Minister Lands, Housing and Urban Development by letter of that date directed the 2<sup>nd</sup> respondent to cancel the titles to suit land 'before closure of business' on that day. (Annexure G).

The 2<sup>nd</sup> respondent on 13.9.2016 cancelled the certificate of title of the 2<sup>nd</sup> applicant for reasons that it was 'issued in error'. (Annexure E).

The applicants sought and were granted interim orders under M. A. No. 73 of 2016, restraining the 2<sup>nd</sup> respondent from proceeding with the intended cancellation, until the main application for temporary injunction was disposed of. (Annexure F). This application was heard in the presence of Officials of the 2<sup>nd</sup> respondent, and this was before the cancellation of the title. The court order which was delivered on 15.9.2016 directed the reinstatement of the applicants on the register, if their titles were already cancelled. There has not been any compliance in that respect.

It is from the above that this application for judicial review was brought. At the hearing of the application, none of the respondents appeared, though there was an affidavit of service on each of them. The matter proceeded in their absence. Counsel Kasangaki represented the 1<sup>st</sup> applicant while Counsel Nangwala represented the 2<sup>nd</sup> applicant.

Judicial review is concerned with the decision making process, not the decision itself. It involves an assessment of the manner in which the decision is made. It is not an appeal, and jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that the process is devoid of illegality, procedural impropriety and irrationality.

Illegality includes acting ultra vires. Ordinarily this means exceeding the limits of the power conferred by statute. Illegality also includes fettering of discretion by a rigid rule or policy or because of an undertaking or agreement, failing to take relevant factors into account, acting for a purpose outside the scope of the governing legislation and acting in bad faith. *Hammersmith and Fulham London Borough Council v. Secretary of State for the Environment* [1990] 3 All.ER 589.

It was submitted that the 3<sup>rd</sup> respondent acted in bad faith when she authored the letter *annexure G*. That letter directed the 2<sup>nd</sup> respondent to cancel applicants' certificates of title to suit land, and to so do, 'before close of day'. In effect the 2<sup>nd</sup> respondent ordered to act mechanically, throw overboard all procedural requirements, sidestep all known rules of fairness and fair play

(oftentimes referred to as natural justice), in the performance of his duty regarding the certificates of titles of the applicants. The procedure of cancelling a certificate of title is, or ought to be well known to Government. To direct performance of an act through improper and illegal procedures, was to perpetuate illegality.

The other aspect of judicial review is to counter irrationality. It was submitted that the acts of the 3<sup>rd</sup> respondent were irrational in the extreme. Irrationality is a concept of 'unreasonableness'. An unreasonable decision is 'one that no reasonable body would have come to. It is not what the court considers reasonable.' See *Associated Picture Houses Ltd. v. Wednesbury Corpn.* [1974] 2 All. ER 680. Court will only interfere where there is no rational basis for the decision.

It is to be noted that the 3<sup>rd</sup> respondent is a Minister of government. The letter annexure G stated that this was a directive from The President and Cabinet. In other words, it can be argued that she was effecting or more correctly simply communicating the decision of government. Therefore she being merely a messenger, she ought not to be crucified for the acts of the principal.

Mwangushya J. (as he then was) in *Yustus Tinkasimire & 18 Others v. Attorney General* HC Misc. Cause No. 35 of 2012 (unreported), held that a Minister of Government would be protected against personal lawsuits arising from his official functions. But if there was evidence that such a person acted beyond the scope of his duties, maliciously or exhibited a certain degree of bad faith, then the protection would cease. The learned Judge added however that, '*If the 2<sup>nd</sup> respondent (the Government Minister) was implementing a decision that was not his own but one reached by Government the question that the decision was taken in bad faith would not arise as far as the 2<sup>nd</sup> respondent is concerned. He is merely an implementer and since the decision maker was made a party, it was not necessary to include the 2<sup>nd</sup> respondent. Once the decision is clearly identified it is still quashable without involving the implementers who act on behalf of Government.*'

In this application, it was submitted that the 2<sup>nd</sup> respondent acted with procedural impropriety. Procedural impropriety includes violating procedural requirements prescribed by the governing legislation, and the violation of standards of fair procedure developed by the courts themselves. See Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374.

The Land Act in S. 91 gives the Registrar wide ranging powers including power to cancel certificates of title without recourse to courts of law. The parameters within which he can exercise those powers are spelt out in that section. These include the power to cancel where the certificate was issued in error. The procedure is laid out in subsection (8). It is clear that the Registrar must comply with rules of fairness and fair play when exercising powers under the Section 91. The procedural requirements in subsection (8) are couched in mandatory terms. He must give not less than 21 days notice to whoever may be affected by the intended action. He must provide an opportunity to such party to be heard. He is enjoined to conduct such hearing in accordance with the rules of natural justice and he must give reasons for his decision.

The Registrar is required to communicate his decision in writing, and an appeal process provided for. All the above are to ensure fairness in the decision making process. These provisions ensure procedural propriety.

The 2<sup>nd</sup> respondent communicated to the applicants' intention to cancel the certificate of title to suit land. He assigned the date of what he referred to a public hearing. He informed all interested parties to ensure their attendance. That hearing was set for 26.9.2016. However, on 13.9.2016 the 2<sup>nd</sup> respondent proceeded to cancel the certificate of title of the 2<sup>nd</sup> applicant. That was a clear case of procedural impropriety. There was no so called public hearing. The applicants were denied the opportunity to raise objections before the cancellation was done. The reasons for the cancellation were not given. The error which the 2<sup>nd</sup> respondent gave for the cancellation was not explained in writing. The mandatory rules of procedure set out in S.91 of the Land Act were thrown overboard. The decision arrived at by the 2<sup>nd</sup> respondent violated the procedural requirements prescribed by the governing legislation. The decision also violated the standards of fair procedure developed by the court. The principle of *audi alteram partem*, the right of a party in a cause not to be condemned unheard was completely ignored. There was non-compliance with the rules of fairness. Such a decision would be quashed.

One of the parties interested in the suit land, National Forestry Authority filed a suit in this court seeking among other orders, cancellation of the certificates of title to suit land. HCCS No. 31 of 2016. The applicants filed an application to stop the 2<sup>nd</sup> respondent from proceeding with the cancellation under S. 91 of the Land Act, till the final determination of the suit No. 31 of 2016. An interim order was granted to that effect. The 2<sup>nd</sup> respondent proceeded to cancel the

certificate of title well aware of the subsistence suit No.31 of 2016. That was irrational as it amounted to having two parallel hearings in respect of the same matter. The action of the 2<sup>nd</sup> respondent would render the civil suit nugatory. See Allan Mugisha Nyirikindi v. The Commissioner for Land Registration & Another HC MA No. 45 of 2011. For that reason also the decision would be quashed.

The orders being sought from this court are certiorari, mandamus, declaration, permanent injunction, general damages and costs. Certiorari issues to quash decisions which are ultra vires, or which are vitiated by error on the face of the record or are arbitrary and oppressive. Mandamus is issued to compel performance of a statutory duty. It is used to compel public officers or public bodies to perform a duty imposed on them by statute. A declaration is a pronouncement by court, after considering the evidence of an existing legal situation. A declaration enables a party to discover what his or her legal position is, about the matter the subject of the declaration and thus open the way to the party concerned to resort to other remedies for giving effect to the declared legal position. A declaration records only existing legal rights and cannot change the legal position in any way. See John Jet Mwebaze v. Makerere University Council & Others C. Appl. No. 78 of 2005.

It was submitted that court should award damages of sh. 800 million to the applicants. It was not shown whether damages can properly be awarded in judicial review proceedings brought by way of a motion. There was no submission of the basis of the amount of damages sought. There was no deposition in that regard from the affidavit in support of the motion. In The Uganda Civil Justice Bench Book published by the LDC, 1<sup>st</sup> Edition 2016, at page 349 para. 9.11.8, the case of Stream Aviation Limited v. The Civil Aviation Authority [2008] HCB at 156, is cited as authority for the proposition that damages cannot be awarded in an application for prerogative orders brought by way of motion. I therefore decline to award general damages.

I was asked to issue a permanent injunction against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to restrain them from committing or perpetuating an illegality. That would be superfluous, as one would be saying the obvious.

In view of the above therefore, the following orders are hereby made.

1. Certiorari shall issue quashing the letter annexure G to the affidavit in support of the motion.
2. A declaration shall issue that the action of the Commissioner for Land Registration cancelling the certificate of title of Hoima Sugar Ltd is unlawful and void.
3. Mandamus shall issue directing the Commissioner for Land Registration to reinstate Hoima Sugar Ltd on the register of titles.

In the event therefore this application is allowed in the terms stated above. The 1<sup>st</sup> and 2<sup>nd</sup> respondents shall meet the costs of this application.

Rugadya Atwoki

Judge

22/12/2016.