

MISCELLANEOUS CAUSE 231 OF 2018

WALUGEMBE DANIEL :::::::::::::::::::: APPLICANT

ATTORNEY GENERAL :::::::::::::::::::::::::::::: RESPONDENT

RULING:

i) An order of certiorari quashing the recommendation/order/decision of the Commission of Inquiry in the Effectiveness of Law, Policies and

Processes of Land Acquisition, Land Management and Land Registration in Uganda (hereinafter referred to as the "Commission of Inquiry") contained in a letter dated 02/08/2018 to the Chairman Uganda Land Commission (ULC) from the said Commission of Inquiry directing that compensation in respect of land comprised in Kyaggwe Block 358 Plot 2, Buyaga Block 161 Plot 4, Buyaga Block 305 Plot 2, Bugangaizi Block 136 Plot 1, and Buyaga Block 318 Plot 2 (hereinafter referred to as "land in issue") be paid to the landlords contrary to the ruling of the High Court of Uganda which ordered that compensation for the above described land be paid to the Applicant through his lawyers M/s. Bashasha & Co. Advocates.

- ii) An order of prohibition prohibiting Ministry of Finance Officials, the ULC and any other Government Department or official from implementing the recommendation, decision or order of the Commission of Inquiry contained in a letter dated 02/08/2018 to the Chairman ULC directing that compensation in*

respect of land in issue be paid to the landlords contrary to the ruling of the High Court of Uganda which ordered that compensation for the above described land be paid to the Applicant through his lawyers M/s. Bashasha & Co. Advocates.

iii) An order of certiorari quashing the recommendation/order/decision of the Commission of Inquiry in a letter dated 02/08/2018 to the Chairman ULC in respect of land in issue be paid to the landlords contrary to the judgment of the High Court of Uganda which ordered that compensation for the above described land be paid to American Procurement Company Inc.

iv) An order of prohibition prohibiting Ministry of Finance Officials, the ULC and any other Government Department or official from implementing the recommendation, decision or order of the Commission of Inquiry in a letter dated 02/08/2018 to the Chairman ULC directing that compensation in respect of land comprised in Bugangaizi Block 62 Plot 3 be

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paid to the landlords contrary to the judgment of the
High Court of Uganda which ordered that
compensation for the above described land be paid to
American Procurement Company Inc.

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v) An order of certiorari, quashing a decision by the
Inspector General of Government (IGG) to investigate
compensation by ULC for land in issue yet
compensation for the above land was ordered by the
High Court of Uganda and the matter is res judicata.

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vi) A permanent injunction order restraining any
Government Department or official or any Commission
of Inquiry from interfering with compensation as
directed by court relating to land in issue or any other
plot of land which is a subject of a court judgment or
order.

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vii) A declaration that the recommendation, order or
decision of the Commission of Inquiry contained in a
letter dated 02/08/2018 to the Chairman ULC directing
that compensation in respect for land in issue be paid
to the landlords contrary to the ruling of the High

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Court of Uganda which ordered that compensation for the above described land be paid to the Applicant through his lawyers M/s. Bashasha & Co. Advocates is illegal and irrational.

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viii) A declaration that the IGG to investigate compensation in respect to land whose compensation is a subject to court ruling and judgment is illegal and irrational.
- ix) An order for costs to the Applicant.

The grounds of the application are briefly that;

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i) That compensation for land Kyaggwe Block 358 Plot 2, Buyaga Block 161 Plot 4, Buyaga Block 305 Plot 2, Bugangaizi Block 136, Bugangaizi Block 62 Plot 3 and Buyaga Block 318 Plot 2 was ordered by court and Commission or Government Department or official can review or investigate a matter decided upon by court.
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ii) That the Commission of Inquiry ordered that compensation in respect of the land comprised in Kyaggwe Block 358 Plot 2, Buyaga Block 161 Plot 4, Buyaga Block 305 Plot 2, Bugangaizi Block 136 Plot 1, Bugangaizi Block 62 Plot 3 and Buyaga Block 318 Plot

2 be paid to the landlords contrary to the order of the High Court of Uganda.

- iii) It is just and equitable that the decision of the Commission of Inquiry in respect of the land comprised in Kyaggwe Block 358 Plot 2, Buyaga Block 161 Plot 4, Buyaga Block 305 Plot 2, Bugangaizi Block 136 Plot 1, Bugangaizi Block 62 Plot 3 and Buyaga Block 318 Plot 2 be paid to the landlords contrary to the order of the High Court of Uganda be quashed and a permanent injunction be issued restraining the Uganda Land Commission, Ministry of Finance or any other Government Department or official from implementing the decision/order of the Commission of Inquiry contrary to a High Court decision of paying the above compensation to the Applicant.
- iv) It is just and equitable that any investigation by the IGG concerning compensation for the land which is subject of court judgment or order is stopped.

The grounds of the application are amplified in the affidavit in support of the application sworn by the Applicant. He essentially

5 states that he deals in real estate and has several pieces of land
over which he is entitled to compensation from ULC or as the orders
of court indicate. That he genuinely acquired land comprised in
Kyaggwe Block 358 Plot 2, Buyaga Block 161 Plot 4, Buyaga Block
305 Plot 2, Bugangaizi Block 136 Plot 1 and Buyaga Block 318 Plot
10 2 from rightful owners. As proof he attached to his affidavit copies
of the deeds of assignments and Powers of Attorney collectively as
Annexure "A". Further, that he assigned his claim in respect of
Bugangaizi Block 62 Plot 3 to American Procurement Company Inc.
and when a dispute arose over payment of the consideration for the
15 said assignment, the American Procurement Company Inc. sued
him in the Commercial Court and consent judgment was executed.
He attached copies of the judgment marked as *Annexure "B"*.

The Applicant further states that ULC delayed to compensate him
in respect of land comprised, among others, in Kyaggwe Block 358
Plot 2, Buyaga Block 6Plot 4, Buyaga Block 305 Plot 2, Bugangaizi
Block 136 Plot 1 and Buyaga Block 318 Plot 2, upon which he sued
the Attorney General vide HCCS No. 456 of 2016; and based on
HCMA No.1525 of 2016 arising from the said suit, a judgment on
admission was entered in his favour in respect of payment of

5 compensation for the said lands, among others, to be effected to him through his lawyers *M/s. Bashasha & Co. Advocates*. The Applicant attached a copy of the ruling as *Annexure "C"*.

The Applicant further states that as he and his said lawyers were seeking compensation as ordered by court, the Secretary to the
10 Commission of Inquiry wrote ordering/directing ULC that the said compensation in respect to land aforementioned be paid to the landlords; which is contrary to the court judgment that ordered compensation be paid to the Applicant through his lawyers. The Applicant attached a copy of the letter from the Commission of
15 Inquiry marked as *Annexure "D"*.

The Applicant contends that the order by the Commission of Inquiry is illegal, ultra vires and irrational in respect of land which was subject to a court judgment and that the said order should be quashed. Further, that the Commission of Inquiry has no
20 jurisdiction to deal with land which is subject of court judgment.

In addition, that on 03/07/018, the IGG wrote to the Applicant commencing investigations in respect to plots of land whose compensation was decided upon in a court judgment. The Applicant attached a copy of the letter of the IGG as *Annexure "E"*. That

5 on 31/07/2018, the IGG wrote to the Permanent Secretary Ministry of Finance, Planning and Economic Development seeking to investigate payments made to the Applicant and American Procurement Company Inc. by ULC. A copy of the letter was attached as *Annexure "F"*.

10 The Applicant contends that the IGG has no power to investigate compensation ordered by court in its judgment in respect of the said lands. Also, that the IGG has no power to investigate payments made to American Procurement Company Inc. in respect of the said land as the said compensation arises from a consent judgment
15 between the Applicant and American Procurement Company Inc.

The Applicant maintains that the decision of the Commission of Inquiry and the IGG dealing with matters already handled by court is illegal, ultra vires and irrational and should be quashed and no Government official or Department should implement or follow any directions or orders touching matters already handled by court.

An affidavit in reply was filed for the Attorney General (*hereinafter referred to as the "Respondent"*) sworn by one Allan Mukamaa State Attorney in the Attorney General's Chambers. He stated that he is familiar with the matters from which this application arises, and

that the Respondent makes no admission to the contents of the affidavit in support of the application. That he knows that the Applicant's case prima facie discloses no issues for resolution by way of Judicial Review and that this application should be dismissed with costs for the reasons that on 08/12/2016, the President of Uganda set up the Commission of Inquiry vide Legal Notice No. 2 of 2017, as amended. That among the Commission's eight Terms of Reference (ToR) is the investigation and inquiry into the management of the Land Fund under the ULC. That in the course of Commission's review of the payments from the Land Fund to several claimants, attention was drawn to the following categories of hefty payments which included payments to the Applicant which require deeper analysis before a final position is reached on the validity of the claim.

Further, that he knows that Annexure 'D' is a letter from the Commission of Inquiry to the Chairman of the ULC instructing him to halt any payments from the Land Fund to claimants among the various categories pending further investigations and not in any specific way targeted to disregard court judgments, including that in favor of the Applicant.

Also, that he knows that the Applicant is challenging a continuing investigative process being carried out by the Commission of Inquiry and the IGG whose conclusive findings are yet to be made. Further, that he knows that court judgments can be varied by way of review or appeal and that the Commission of Inquiry has not in any way interfered with a valid court judgment but will, upon completion of its mandate and depending on the outcome of the investigations, liaise with the Attorney General to follow due court process as set by the law.

Further, that he knows that the essence of Judicial Review is to challenge the manner in which a decision was arrived at to ensure that the Applicant concerned received fair treatment by the lawful authority in arriving at the decision in issues. That in order for this court to come to such a finding, there must be a decision and since the Commission of Inquiry is still carrying out investigations and has not arrived at conclusive findings; this application is prematurely brought before this court. That it is in the interest of justice that this court finds that this matter is premature and direct that the Commission of Inquiry carries out investigations to a logical conclusion. Further, that the Applicant suffers no injustice

5 from such an order since in the event that he feels aggrieved after
the conclusion of the Commission's investigations, he can still seek
remedies from this court. That in any case this application discloses
no evidence of illegality, unfairness or irrationality as the
Commission of Inquiry was acting in accordance with the law and
10 in line with its official duties and obligations and it would not be in
the interest of justice for this court to grant the orders sought as it
would jeopardize the operation of the Commission of Inquiry as
mandated. That it is just and equitable that this application is
dismissed pending the conclusion of the investigations by the
15 Commission of Inquiry. That whatever he stated herein above is
true and correct to the best of his knowledge and belief.

At the outset, this court notes that upon being served, on
17/10/2018, with an affidavit in rejoinder by the Applicant, the
Respondent, on 18/10/2018, attempted to file a purported affidavit
20 in reply sworn by Dr. Douglas Singiza the Secretary to the
Commission of Inquiry. It would appear clearly that this was
prompted by the Applicant's affidavit in rejoinder, at paragraphs 3,
and 4; stating that Allan Mukama who had sworn the affidavit in
reply had no capacity to do so; him being neither an employee of

5 the Commission of Inquiry or the IGG, besides him not disclosing
his source of information.

The affidavit of Dr. Singiza is a "purported" affidavit in reply given
the now settled position of the law. No affidavit in reply or
supplementary affidavit can be validly and or properly filed in a
10 matter where an affidavit in rejoinder has been filed by the opposite
party and served. See: **Mutembuli Yusuf vs. Nagwomu Moses
Musamba & Electoral Commission CAEPA No.43 of 2016.**

It follows that Dr. Singiza's affidavit is a vain attempt to cure the
fatal defect and it is of no evidential value. It cannot answer to any
15 of the facts sworn to in the affidavit supporting the application. The
position of the law is that where facts are sworn to in an affidavit
and these are not rebutted or denied by the opposite party, the
presumption is that such facts are accepted as true. See: **Massa vs.
Achen [1978] HCB 297.** That would only leave the only affidavit in
20 reply of the Respondent validly on court record being one sworn by
Allan Mukama; subject to its evaluation for veracity and passing the
threshold reliability test of evidence. An issue, under Issue No.2, on
this particular affidavit was framed and it will be resolved at that
stage.

5 The following are the issues for determination;

1. *Whether this is a fit and proper case for judicial review.*
2. *Whether Allan Mukama a State Attorney in the Attorney General's Chambers has capacity to depone to matters concerning the action of the Commission of Inquiry and actions of the IGG.*
3. *Whether the Commission of Inquiry is mandated to issue orders contrary to court decisions or judgment in respect of the same subject matter.*
4. *Whether the IGG has powers to commence investigations in a matter that has been handled by court.*

15 ***Resolution of the issues:***

Issue No.1: Whether this is a fit and proper case for judicial review.

20 The power of the High Court to issue orders under Judicial Review is directly derived under section 36 (1) of the Judicature Act Cap 13, which provides as follows;

"(1) The High Court may make an order, as the case may be, of—

- (a) mandamus, requiring any act to be done;
(b) prohibition, prohibiting any proceedings or matter; or
(c) certiorari, removing any proceedings or matter to the
High Court.”

10 Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules ~~S~~ 11 of
2009, is to the effect that a party may apply for an order of
prohibition, certiorari, declaration and injunction by way of judicial
review.

Further, in ***Fuelex Uganda Ltd. vs. Attorney General & Others***
HCMC No. 48 of 2014 cited in ***Dr. Daniel K.N. Semambo vs.***
15 ***National Animal Genetic Resource HCMC No.30 of 2017;*** Musota
J (as he then was) held, inter alia, 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
and procedural impropriety. Clearly by its nature and from its
20 content, the instant application is one that is permitted under the
said rules. Accordingly, *Issue No.1* is answered in the affirmative.

5 Issue No.2: Whether Allan Mukama a State Attorney in the Attorney General's Chambers has capacity to depone to matters concerning the action of the Commission of Inquiry and actions of the IGG.

10 It must be emphasized that the only affidavit in reply to the instant application is that of Allan Mukama. He states that he is a State Attorney in the office of the Attorney General. He does not state that he works for the Commission of Inquiry or with the office of the IGG. To that effect Allan Mukama has no capacity to depone to matters concerning the said toe bodies.

15 In addition, Allan Mukama does not state in his affidavit how he came into possession of the knowledge of the facts he depons to touching and concerning the acts of the Commission of Inquiry or the IGG. He mainly states facts clearlybased on information which evidently came to him as second hand information but whose
20 sources he does not disclose at all. It is settled that second hand information of that nature should be clearly acknowledged by its source. In *Abdu Serunjogi vs. Sekitto* [1977] HCB 242, it was held that where an affidavit is sworn and the deponent does not

disclose his source of information, such affidavit is defective and should not be acted upon. An affidavit must specify the different sources of information of the deponent. The Court of Appeal in ***Uganda Journalist Safety Committee & Others vs. Attorney General Constitutional Petition No. 07 of 1997*** emphasized that failure to disclose sources of information will normally render the affidavit null and void, and that an affidavit is not evidence unless it complies with these legal requirements.

Therefore, Allan Mukama's affidavit is fatally defective and cannot be relied upon. It is perhaps the more reason that that the Respondent attempted to "fill in" the gap by filing another purported affidavit in reply by Dr. Singiza well after pleadings had closed. As already stated under *Issue No.1*, Dr. Singiza's affidavit is of no evidential value on account of it having been improperly filed on court record and it cannot be relied on.

Besides that above, Order 19 r. 3 (1) of the Civil Procedure Rules provides as follows;

"(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove,

except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated."

From his affidavit, Allan Mukama does not know what transpired in the Commission of Inquiry or the basis upon which the IGG commenced investigations. His affidavit is basically speculative which renders it highly suspect and therefore unreliable.

The case of **Ojok vs. Uganda Revenue Authority (1993) 11 KALR 123**, restated the above mandatory legal requirement that affidavits must be confined to such facts as the deponent is able of his knowledge to prove and excludes argumentative contents. In the instant application, even assuming that the deponent had the capacity to swear the affidavit in reply, which he does not have, the affidavit as a whole is quite argumentative, and as such shall be disregarded. On the principle in **Massa vs. Achen** case (supra) that renders the application unchallenged. Issue No.2 is answered in the negative.

Issue No.3: Whether the Commission of Inquiry is mandated to issue orders contrary to court decisions or judgment in respect of the same subject matter.

In his affidavit in support of the application, under paragraphs 7, 8, 9, 10, 11, 12 and 13 and paragraphs 4 and 6 of the affidavit in rejoiner, the Applicant states that the action of the Commission of Inquiry in issuing orders in respect of a matter decided upon by court is illegal, ultra vires and irrational. The same paragraphs shows that the action of the IGG to investigate a matter already handled and concluded by court is illegal and ultra vires.

Black's Law Dictionary 8th Edition, describes "an illegality" as an act that is not authorized by law or the state of not being legally authorized. The Commission of Inquiry, even by stretching its ToR, was never mandated to vary or countermand court orders and judgments. Therefore, any orders passed or directives issued by Commission of Inquiry which are contrary or have the effect of contradicting a court order/judgment in relation to the same subject matter is without doubt illegal and ultra vires.

Black's Law Dictionary 8th Edition also describes the phrase "irrational" to mean that which is not guided by reason or by a fair consideration of the facts. Applying the same definition to facts of the instant application, the decision of the Commission of Inquiry is irrational given the existence of a court order/judgment to the contrary on the subject land.

Further, *The Uganda Civil Justice Bench Book* at page 341, describes "illegality" to mean ultra vires which ordinarily means exceeding the limits of the power conferred by statute. In the same book, at page 341, it is stated that "irrationality" means unreasonableness. Given these authoritative descriptions, in light of the facts of this application, it would mean that the action of the Commission of Inquiry ordering payments to persons other than persons and the in manner directed to be paid by court is clearly illegal, ultra vires and irrational.

The Respondent raised the issue that this application is premature. As already found above, the competency of the deponent of this affidavit poses serious legal challenge as he had no capacity to swear the affidavit based on information whose sources he did not

even disclose. That notwithstanding, the claim that this application is premature is premised on the erroneous notion that the order of the Commission of Inquiry was issued pending investigations. However, a look at the order, particularly at page 6 thereof, shows that the Commission of Inquiry made final order regarding who should be paid. This is the very decision that is being strongly contested by the Applicant as greatly prejudicial to him given that after payment of the persons directed to be paid by the Commission of Inquiry, he will not easily recover his money yet there is a judgment clearly directing that it is the Applicant to be paid.

15 Apart from the above, the decision which amounts to an order of the Commission of Inquiry invariably interferes with the independence of the Judiciary. On that account alone, it cannot reasonably be left to stand. It cannot be over emphasised that the Commission of Inquiry has no mandate whatsoever to issue orders
20 contrary to court orders or judgments over the same subject matter. The Commission of Inquiry is not a court of law. By ordering payment to persons other than the one ordered by court, the

Commission of Inquiry overstepped its mandate and as such acted illegally. Issue No.3 is answered in the negative.

Issue No. 4: Whether the IGG has powers to commence investigations in a matter that has been handled by court.

The Inspectorate of Government Act, 2002 under section 19 (1) provides for the limitation on investigations by the Inspectorate as follows;

“(1) The Inspectorate shall not have power to question or review any of the following matters—

(a) the decision of any court of law or of any judicial officer in the exercise of his or her judicial functions...”

A perusal of the IGG's letter of 03/07/2018 to the Applicant notifying him of the ongoing investigations concerning land clearly was an attempt to review or question a matter which was already decided upon by court. The compensation for land in issue was ordered as a result of a court order/judgment. The IGG has no powers under the cited provision of the law to question or review a

decision of any court of law or of any judicial officer in the exercise of his or her judicial functions.

The limitation of the IGG's power was duly pronounced upon by the Supreme Court in **Gordon Sentiba & Others vs. Inspectorate General of Government SCCA No 06 of 2008** at page 20, where it was held, inter alia, that the object of the limitations on the powers of the IGG was to preserve the independence of the Judiciary and the finality of the judicial process. A judicial decision between the parties is res judicata between them and should be respected by the parties and all the authorities until set aside in accordance with the law. Given the above stated position of the law, the actions of the IGG to commence investigations into matters which are a subject of a court judgment/decision are illegal and ultra vires.

It also means that the claim by the Respondent that the application is premature and that the order of the Commission of Inquiry is not final and that the IGG has powers to investigate the said compensation; are inaccurate and clearly devoid of any legal basis. Issue No.4 is answered in the negative.

For the above reason, this application succeeds and it is allowed with the following orders and declarations;

- 1. An order of certiorari doth issue quashing the recommendation /order/decision of the Commission of Inquiry contained in a letter dated 02/08/2018 to the Chairman ULC from the said Commission of Inquiry directing that compensation in respect of land in issue be paid to the landlords contrary to the ruling of the High Court of Uganda which ordered that compensation for the above described land be paid to the Applicant through his lawyers M/s. Bashasha & Co. Advocates.**
- 2. An order of prohibition doth issue prohibiting Ministry of Finance Officials, the ULC and any other Government Department or official from implementing the recommendation, decision or order of the Commission of Inquiry contained in a letter dated 02/08/2018 to the Chairman ULC from the said Commission of Inquiry directing that compensation in respect of land in issue be paid to the landlords contrary to the ruling of the High**

Court of Uganda which ordered that compensation for the above described land be paid to Walugembe Daniel through his Advocate of M/s. Bashasha & Co. Advocates.

3. An order of certiorari doth issue quashing the recommendation /order/decision of the Commission of Inquiry in a letter dated 02/08/2018 to the Chairman ULC from the said Commission of Inquiry in respect of land in issue be paid to the landlords contrary to the judgment of the High Court of Uganda which ordered that compensation for the above described land be paid to American Procurement Company Inc.

4. An order of prohibition doth issue prohibiting Ministry of Finance Officials, the ULC and any other Government Department or official from implementing the recommendation, decision or order of the Commission of Inquiry in a letter dated 02/08/2018 to the Chairman ULC from the said Commission of Inquiry directing that compensation in respect of land in issue be paid to the landlords contrary to the judgment of the High Court of Uganda which ordered that compensation for the above

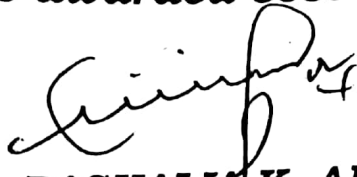
described land be paid to American Procurement Company Inc.

- 5. An order of certiorari doth issue quashing a decision by the Inspector General of Government to investigate compensation by ULC in the land in issue for being ultra vires as well as compensation for the above land having been ordered by the High Court of Uganda and the matter is res judicata.*
- 6. A permanent injunction order doth issue restraining any Government Department or official or any Commission of Inquiry from interfering with compensation as directed by court relating to land in issue or any other plot of land which is a subject of a court judgment or order.*
- 7. The recommendation, order and /or decision of the Commission of Inquiry contained in a letter dated 02/08/2018 to the Chairman ULC from the said Commission of Inquiry directing that compensation in respect of land in issue be paid to the landlords contrary to the ruling of the High Court of Uganda which ordered that compensation for the land in issue be paid to*

Walugembe Daniel through his lawyers M/s. Bashasha & Co. Advocates; is illegal and irrational.

8. The IGG to investigate compensation in respect to land whose compensation is a subject to court ruling and judgment; is ultra vires, illegal and irrational.

9. The Applicant is awarded costs of this application.



BASHAIJA K. ANDREW
JUDGE

30/11/2018.