

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES 2009
IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) (AMENDMENT)
RULES 2019
MISCELLANEOUS CAUSE NO. 16 OF 2021

WAMALA ABDU ::: APPLICANT

VERSUS

COMMISSIONER FOR LAND REGISTRATION ::::::::::::::::::::::::::::::::::::::: RESPONDENT

Before; Hon. Justice Victoria Nakintu Nkwanga Katamba

RULING

The application is brought under Section 33 and 38 of the Judicature Act, Rules 3(1), (2), 6(1) and 8 of the Judicature (judicial review) rules, 2009 and Rule 5 of the Judicature (judicial review) (Amendment) Rules, 2019 seeking the following orders;

1. A declaration that the Respondent acted with procedural irregularity and impropriety in cancellation of the Applicant's certificate of title for land comprised in LRV 4057 Folio 17 Plot No. 34-38 situate at Matooke Road, Masaka;
2. An order of certiorari quashing the decision of the Respondent cancelling the Applicant's certificate of title communicated on the 2nd March, 2021;
3. An order of prohibition restraining the Respondent and all its agents from implementing the findings and orders of the Respondent in so far as they affect the Applicant;
4. An order of mandamus compelling the Respondent to reinstate the Applicant on the certificate of title;

5. A permanent injunction restraining the Respondent and its agents from implementing the orders of the Respondent in so far as they affect the Applicant;
6. Costs of the motion;

The grounds of the application as contained in the affidavit of Applicant are briefly that;

1. The Applicant is the proprietor for land comprised in LRV 4057 Folio 17 Plots 34-38 situate at Matooke Road having purchased the same from Kayemba Godfrey in 2015;
2. The Respondent by notice of effect of changes in the Register dated 2nd March 2021 took a decision to cancel the Applicant's title which decision was reached without prior notice to the Applicant;
3. The decision to cancel is certificate of title was procedurally improper and ultra vires and was reached at in violation of the Applicant's fundamental right to be fairly heard;

The Respondent did not file a reply to the application despite having been served with the application on the 3rd day of May, 2021 as per the affidavit of service deponed by Ddungu Andrew and the acknowledgement of receipt attached thereto.

Counsel for the Applicant filed written submissions and prayed that the Applicant be allowed to proceed ex parte. Counsel further argued that the Respondent in contravention of *Section 91 (8) of the Land Act Cap 227* failed to accord the Applicant with an opportunity to be heard before cancellation of his certificate of title. The Applicant discovered that the notices meant for him were issued to a different person which directly affected his proprietary interests. Counsel invited court to find that the failure to serve a notice for the public hearing violated the Applicant's right to be heard and the subsequent decision to cancel his title was illegal. Counsel further cited and relied on the case of *Proline Soccer Academy V. Commissioner Land Registration (2) Miscellaneous Application 2018-229 (2019) HCCD 46* to pray that the court grants all the orders sought in the application.

Determination of the application;

The Respondent was duly served with the application but despite such service, there is no reply on the record and neither the Respondent nor his agents entered appearance to respond to the application. This matter therefore proceeds against the Respondent *exparte*.

Counsel for the Applicants cited and relied on the case of *Kaahwa Francis Vs Commissioner Land Registration HCMA No. 2 of 2012* wherein a position was taken to the effect that the presumption that failure to file an affidavit in reply by the Respondent is that the Respondent is not opposing the application. Counsel further relied on the case of *William Akankwasa V Registrar of Titles HCMA No. 33 of 2008* where Lady Justice Percy Night Tuhaise where it was further stated that facts adduced by affidavit evidence that are neither denied nor rebutted are presumed to be admitted.

I associate myself with the decision cited above and further add that where a Party is duly served and they do not respond to the application, there is no other inference that can be deduced from such neglect or failure to respond than that of acceptance or admission.

Issue one; whether the Respondent acted with procedural irregularity and impropriety in cancellation of the Applicant's certificate of title of land comprised in LRV 4057 Folio 17 Plots 34-38 situate at Matooke Road, Masaka;

Section 36 (1) of the Judicature Act Cap 13, provides for the power of the High Court to issue orders under judicial review. It 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.”

Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules SI 11 of 2009, provides that a party may apply for an order of prohibition, certiorari, declaration and injunction by way of judicial review in appropriate case. **Rule 3A of the Judicature (Judicial Review) (Amendment) Rules SI 32 of 2019** provides that;

“Any person who has a direct or sufficient interest in a matter may apply for judicial review.”

Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.*

The Applicant brought this application for judicial review challenging the decision of the Respondent for cancellation of the Applicant’s certificate of title for land comprised in LRV 4057 Folio 17 Plot No. 34-38 situate at Matooke Road, Masaka. The Applicants states that the decision was reached unfairly, irregularly and with procedural impropriety for reasons that the Applicant was not granted a right to be heard as the law provides.

The Respondent derives special powers to cancel certificates of title from Section 91 of the Land Act Cap 227. Under Section 91(2), the Commissioner is required to give notice of not less than twenty-one days to any party likely to be affected by the decision being taken, in this case the cancellation. The Commissioner is further mandated to give any interested party a hearing in accordance with the rules of natural justice and the decision made should be communicated to the affected party giving reasons of such decision.

In the instant case, the Respondent made a decision to cancel the Applicant's certificate of title and the Applicant states that he was never informed of any steps made towards the cancellation but only discovered from the registry that his certificate of title had been cancelled and a notice was issued to the wrong person.

The Respondent has not adduced any evidence to disprove the Applicant's claims and neither was there a response filed to oppose the application. The learned justices in Prof. *Oloka Onyango & Ors Vs Attorney General (Constitutional Petition No.6/2014)* while considering Order 8 Rule 3 Civil Procedure Rules found that every allegation in a Plaint, if not specifically or by necessary implication denied in a pleading by an opposite party, shall be taken to be admitted. I associate myself with the decision of the learned justices and find that the Respondent's failure to oppose the application amounts to admission of the Applicant's allegations.

The Applicant adduced a notice dated 2nd March 2021 in which the Respondent refers to a letter dated 21st December 2020 inviting the applicant to a public hearing, service through publications in the Monitor newspaper and a decision for cancellation reached at. In the letter the Applicant was advised to appeal within 60 days.

Having established that there is no evidence to prove that the procedure for cancellation of title was followed to grant the Applicant notice of the intended cancellation, a hearing to consider his case or reasons for the cancellation, I find that the Applicant has sufficiently prove that the Respondent did not follow the law, procedure and rules of natural justice in reaching the decision to cancel the Applicant's certificate of title.

Issue two; what remedies are available to the Applicant;

In the case of *Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300* as follows:

“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...**Illegality** is when the decision-making authority commits an error of law in the process of taking or making the act,...**Irrationality** is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision....**Procedural Impropriety** is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”*

The Applicant has proved that the Respondent did not follow the law and procedure while reaching the decision to cancel the Applicant’s certificate of title. The procedure under **Section 91 of the Land Act Cap 227** clearly mandates the Respondent to issue notice, give the interested party a hearing following the rules of natural justice and giving reasons for reaching the decision made. Failure to adhere to procedure rules and rules of natural justice was therefore, illegal, improper and irregular.

The Applicant prayed for an order of Certiorari quashing the Respondent decision. In the case of **John Jet Tumwebaze v. Makerere University Council and ors (Civil Application No. 78 of 2005)**, Ag. Justice Remmy Kasule (as he then was) gave the definition of Certiorari as a prerogative writ issued to quash a decision which is ultra vires or vitiated by an error on the face of the record.

In the case of **R v Lord President of the Privy Council, ex parte Page [1993] AC 682** Lord Browne-Wilkinson noted;

“ The fundamental principle(of judicial review) is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases...this intervention....is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be

exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful”.

The Applicant has proved that the Respondent reached his decision irregularly and improperly without following the procedure under Section 91 of the Land Act and granting the Applicant a fair hearing hence the decision is also unreasonable. The Respondent therefore acted ultra vires in reaching the decision to cancel the Applicant`s certificate of title.

A prerogative order of Certiorari is hereby issued against the Respondent, quashing and setting aside the decision of the Respondent cancelling the Applicants certificate of title for land comprised in LRV 4057 Folio 17 Plots 34-38 situate at Matooke Road.

The Applicant prayed for an order of prohibition restraining the Respondent and its agents from implementing the decision of the Respondent. An order for prohibition is issued when a decision or action is anticipated. (***Kampala University-v- National Council for Higher Education MC No. 053 OF 2014***)

In the instant case, the decision to cancel the Applicant`s certificate of title has been concluded. However, it can be anticipated that the respondent and its agents would conclude further transactions relating to the land which would further prejudice the Applicant`s interests.

Therefore, it would be prudent to prohibit any further actions that might be taken to implement the decision that was made ultra vires.

An order for prohibition is therefore issued against the Respondent, its agents, officials from implementing the findings and orders of the Respondent in so far as they affect the Applicant.

The Applicant further prayed for an order of mandamus compelling the Respondent to reinstate the Applicant on the certificate of title;

An order of mandamus is in effect a command ordering the Respondent to do or implement a certain action. An order of mandamus has been defined in *Halsbury's Laws of England, 2001, 4th Ed, Vol. 1(1), para. 119 at p. 268* as follows:

“A command issued by the High Court, directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing specified in the command and which appertains to his or their office, and is in the form of a public duty”.

Having established that the decision to cancel the Applicant's certificate of title was ultra vires and reached at improperly and irregularly, an order of mandamus is hereby issued ordering the Respondent to reinstate the Respondent on the certificate of title.

A permanent injunction is hereby issued restraining the Respondent and its agents from implementing the orders of the Respondent in so far as they affect the Applicant.

This application hereby succeeds and is allowed with costs.

I so order.

Dated at Masaka this 12th day of November, 2021

Signed;



Victoria Nakintu Nkwanga Katamba

Judge