

MISCELLANEOUS CAUSE NO.082 OF 2022

VERSUS

Before: Lady Justice Alexandra Nkonge Rugadya.

10 The applicant brought this application by way of notice of motion brought this application under **Section 36 (1) (a), (b), (c), & (e), (2), (3), (4), (5) & (7), Section 38 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act cap.71, Rules 3 (1), (2), 4 & 6 of the Judicature (Judicature Review) Rules 2009, the Judicature (amendment) Rules 2002, and the Judicature (Judicial Review) (amendment) Rules 2019**, seeking the following orders;

- 30 The application is supported by the affidavit of the applicant, Ms. Nakazzi Robinah a widow of the late Joseph Semanda. She states that she is one of the 7 (seven) biological children, and one of the beneficiaries of the late Joseph Ssemanda (*hereinafter referred to as the 'deceased'*) who was the registered proprietor of land comprised and known as **Kyadondo Block 265 plot 339 land at Bunamwaya** (*hereinafter referred to as the 'suit land'*) having been registered on 15th July 2005 at 4:15 pm under **instrument no. KLA277164**.

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the respondent was on 28th December 2020, when the deceased had already succumbed to COVID-19 and had been buried on 21st December 2020.

In addition, that the above date also fell within the timeline when a ban on all transactions on the register had been issued by the then Minister of Lands Housing and Urban Development on 16th April 2020 and although the same was a working day, it also fell within the Christmas break period, which was volatile owing to threat and spread of COVID-19.

That the respondent did not follow the due process for cancellation of certificates of title laid down under **Section 91 of the Land Act, and Sections 176 & 177 of the Registration of Titles Act** and that while the deceased was not heard before the title was cancelled, the respondent also had no powers to cancel the questioned title on the ground of fraud or forgery.

Further, that upon conducting a search at the Lands Registry, the applicant discovered that the respondent cancelled the title of its own volition as no complaint had been recorded, thus the respondent's actions were ultra vires.

That while this application discloses sufficient reason for the court to exercise its discretion to call for and quash the respondent's decision to cancelling the certificate of title of the suit land so that justice is served, it is in the interest of justice, the respondent's cancellation order of the late Ssemenda's name from the entire suit land be set aside, and the deceased's name is reinstated in the register.

That the applicant is not guilty of any dilatory conduct in bringing this application as there has been no inordinate delay, and that if this application is not allowed to maintain the *status quo*, the applicant will be substantially and irretrievably prejudiced, and that this application has been brought in good faith. That it is fair, just, and equitable that this application is allowed.

The respondent was served with the application, and it acknowledged receipt of the same but did not file a reply to defend the application. This matter, therefore, proceeded *ex parte*, after this court was satisfied that the respondent had been duly served with the court process.

Representation:

The applicant was represented by **M/s Kaggwa & Partners Co. Advocates**. Counsel also filed written submissions in support of the application as directed by this court.

Consideration of the application by court.

I have carefully read the pleadings, evidence and submissions of the applicant, the details of which are on court record, and which I have taken into account in considering whether or not this application merits the prayers sought.

The applicant filed this application as the widow of the deceased registered proprietor of the land comprised in **Bunamwaya, Block 265, plot 335** which was cancelled by the respondent and that she and 6 children of the late Joseph Semanda were beneficiaries under the deceased's estate.

It is now settled that a beneficiary of an estate can sue to protect his or her interest before obtaining Letters of Administration. (**See: Israel Kabwa versus Martin Banoba S.C.C.A. No.52 of 1995**). **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.”

The applicant has through her affidavit evidence shown that she has direct sufficient interest in the suit land as a beneficiary of the late Joseph Ssemenda and that therefore has the *locus standi* to file this application which is filed under **section 36 (1) of the Judicature Act Cap 13.**

It provides for the power of the High Court to issue orders under judicial review: a mandamus, requiring any act to be done; an order of prohibition, prohibiting any proceedings or matter; or certiorari, removing any proceedings or matter to the High Court. The application may be filed under **Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules SI 11 of 2009.**

In order to succeed in an application for judicial review, the court in the case of **Pastori vs. Kabale District Local Government Council and Others [2008] 2 EA 300** stated that an applicant ought to prove that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety

The court went on to state as follows;

‘...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.’

In the case before this court, the applicant brought this application for judicial review challenging the respondent’s decision to cancel the late Joseph Ssemenda’s certificate of title for the suit land comprised in **Kyadondo Block 265 plot 339 land at Bunamwaya.**

The applicant states that the due process for cancellation of titles as laid down under **Section 91 of the Land Act** and **the Registration of Titles Act** and that while the respondent had/has no powers to the title on grounds of fraud, the respondent’s actions were *ultra vires* owing to the fact that there was no complaint of any sort on the record and that the respondent acted on its own volition in cancelling the title.

In addition, that the only known meeting that the late Joseph Semanda was summoned to attend happened to take place on 28th December 2020 when the deceased had passed on and had been buried, and it also fell within the timeline when a ban on all transactions on the register had been issued by the then Minister of land, Housing and Urban Development.

An action or decision may be illegal on the basis that the public body has no power to take that action or decision or has acted beyond its powers. (See: **Thugitho Festo vs. Nebbi Municipal Council (Arua) HCMA No. 15 of 2017**).

Similarly, when a 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. (See: **Ojangole Patricia & 4 O'rs vs. Attorney General HCMC No. 303 of 2013**)

5 In the case of **Hilda Wilson Namusoke & 3 Ors v Owalla's Home Investment Trust (E.A) Limited Supreme Court Civil Appeal No. 15 of 2017**, the Supreme Court held that the commissioner of land registration does not have powers to cancel a certificate of title on the ground of fraud.

Evidence in the instant application shows that the respondent cancelled the certificate of title on grounds of forgery of a signature on the transfer instrument. The decision to amend the register was
10 made by the respondent on 4th March, 2021.

The applicant has proved that the respondent exercised powers that he did not possess at the time of reaching the decision to cancel the applicant's certificate of title. The respondent's actions were, therefore, illegal, improper and irregular. But also secondly, the decision was taken before according the family of the late Semanda an opportunity to be heard. As such therefore, it was made contrary to
15 the rules of natural justice.

Court therefore finds this a fit and proper case for the exercise of its discretion to grant the remedies below sought by the applicant.

Remedies.

The applicant's prayer is for an order quashing the respondent decision. In the case of **John Jet Tumwebaze v. Makerere University Council and others (Civil Application No. 78 of 2005)**, Ag. Justice Remmy Kasule (as he then was) defined *certiorari* as a prerogative writ issued to quash a
20 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** court noted that the fundamental principle (of judicial review is that the courts will
25 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.

If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which
30 is procedurally irregular or unreasonable, he is acting ultra-vires his powers and therefore unlawful.

The applicant in this case has proved that the respondent reached his decision irregularly and improperly by cancelling the certificate of title of the suit land based on fraud. The respondent therefore acted ultra vires in reaching the decision to cancel the certificate of title.

A prerogative order of *certiorari* is hereby issued against the respondent, quashing and setting aside
35 the decision of the respondent cancelling the certificate of title for land comprised in **Kyadondo Block 265 plot 339 land at Bunamwaya**.

The applicant prayed for an order of prohibition restraining the respondent and its agents from implementing the decision of the respondent. An order for the 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 late father'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's interest.

The applicant further prayed for an order of mandamus compelling the respondent to reinstate the late Semanda Joseph on the register 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 late Semanda Joseph on the register certificate of title was ultra vires and reached at improperly and irregularly without according any hearing by the affected parties, an order of mandamus is hereby issued, ordering the respondent to reinstate the late Joseph Semanda 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's husband's title.

No orders as to costs.

I so order.


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Alexandra Nkonge Rugadya.
Judge

14th December, 2022.

Delivered
by email
14/12/2022