THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISCELLANEOUS CAUSE NO. 005 OF 2022

LWANGA BEN MBEREGENYA ==========APPLICANT

VERSUS

1. THE COMMISSIONER LAND REGISTRATION

2. KAKANDE ALOYSIOUS==========RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

RULING

At the hearing of the application Preliminary objections were raised by the 1st and 2nd Respondent according to **Order 6 Rule 28** of the Civil Procedure Rules to the effect that the instant application is not amenable since it should not be for Judicial Review but for contempt of court. Secondly, that the application was instituted out of time and without leave of Court. Thirdly, that the applicant did not exhaust all the available remedies before instituting the instant application.

Counsel for the 1st respondent submitted that in an application for Judicial Review according to **Rule 7A** of the Judicature (Judicial Review amendment) rules one must satisfy that they are the aggrieved party and exhausted all the existing remedies available within the public body under the law before instituting the application. That the matter involves an administrative public body or official and the said application did not exhaust the available remedies within the public body. That this application was filed on the basis of rectification of the register and the applicant cannot come to court; yet the orders were granted by court so the applicant cannot claim to be aggrieved by it.

The other available remedy if the applicant so wished was to bring to the attention of court at Kampala that there had been no compliance of the court order or contempt as opposed to instituting the instant application. Counsel relied on the case of **Oil Sees (U) LTD v. Prince Kisani Secretary to the Treasury HC Misc. Application No. 136/2008;** where court noted that its becoming increasingly fashionable to seek Judicial review orders even in the clearest cases

where alternative procedures are more convenient. Court noted that the trend is undesirable and must be cleared.

Counsel concluded that the commissioner of lands based his decisions on the court order dated 10th June, 2020. This order is still subsisting, not appealed or reviewed.

Counsel for the applicant on the other hand submitted that it was not an administrative decision of the Commissioner but a court order. That the applicant had other remedies under the law. That the registrar was acting on a court order contained in private rights in regard to that piece of land. That even if the order was not obeyed in full that amounts to contempt of the court order. Counsel relied on the case of **Dr. Charles Twesigye v. Kyambogo University, Miscellaneous Application No. 120 of 2017**, where it was stated that disobeying part of a court order amounts to contempt of court. That the decision taken by the 1st Respondent was irrational, illegal and unreasonable. Clause I of the order required the 1st respondent to cancel all entries made after the decree.

Counsel for the 1st respondent in rejoinder submitted that the applicant did not exhaust the available remedy in law, before bringing this application. One of the requirements for bringing an application for Judicial Review is that the applicant ought to have exhausted the necessary remedies. Counsel quoted **Section 182 (1)** of the Registration of Titles Act and noted that application for Judicial review should therefore be a last resort.

Thus, if a person is dissatisfied with the decision of the Registrar then such person can ask the Registrar to appear before court and substantiate. That the applicant did not follow this provision but rather brought the instant application for review.

Secondly, that the alleged act or omission was from an order of court. That if the registrar did not do what the court ordered then their remedy still lie in bringing contempt of court proceedings and not filing an application for judicial review.

Thirdly, that the application has to be made within three months from the date when the grounds of application first arose. This application is thus premature and does not warrant giving of the orders sought. That the applicant can still go for other remedies. Application should therefore be dismissed with costs.

The 2nd respondent made submissions more or less similar to those of the 1st respondent in regard to the preliminary objections which I will not reproduce.

Analysis of court:

I have carefully considered the submissions of all the parties in regard to the Preliminary objections as raised by the 1st and 2nd Respondents to the effect that:

1. The Applicant should have brought this case under contempt of Court and not an application for judicial review.
2. That the applicant did not exhaust all other remedies provided under **Section 182** of the Registration of Titles Act.

Under **Rule 7A** of the Judicature (Judicial Review) (Amendment) Rules, 2019, the Court in considering an application for judicial review must satisfy itself that:

a. The application is amenable for judicial review,

b. The aggrieved person has exhausted the existing remedies available within the public body or under the law and;

c. The matter involves an administrative public body or official among others.

A public body within the meaning of **Rule 2 (a)** of the Judicature (Judicial Review) (Amendment) Rules, 2019 includes the Government, any Department, Services or under taking of the Government.

In the case of **Fuelex Uganda Ltd v. The Attorney General & Others H.C.M.C. No. 48 of 2014** cited in **Dr. Daniel K.N. Semambo v. National Animal Genetic Resource Centre H.C.M.C. 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.

Also, in the case of **Chief Constable of North Wales Police v. Evans [1982] 3 ALLER 141,** it was stated that;

> *"It is trite that judicial review is concerned not with the decision in issue per se, but with the decision making process. Essentially, judicial review involves the assessment of the manner in which the decision is made?, it is not an appeal and the jurisdiction is exercised in supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality."*

In the instant case the applicant brought an application for judicial review seeking to quash by way of certiorari the decision of the 1st Respondent where he

registered the 2nd respondent as the proprietor of land comprised in Gomba Blcok 137 Plot 1 Land at Luzira and damages caused to the applicant as a result of the inconvenience caused by the actions of the respondent and costs.

The applicant averred that on the 27th day of November 2019, an order was issued requiring the 1st respondent herein to cancel the certificate of the applicant herein issued in contempt of court orders. That the 1st respondent was only ordered to cancel entries in the Certificate of Title for Gomba Block 137 Plot 1 land at Luzira made in contempt of court orders in the Decree in Civil Suit No. 358 of 2013 dated 17th July 2017. Thirdly that the 1st respondent reinstated the 2nd respondent instead of Gideon Mberegenya whose estate the applicant represents. Thus, for fear of losing the suit land, the applicant sought to have the decision of the 1st respondent reviewed by way of certiorari since it was tainted with illegality, irrationality and unreasonableness.

It is trite that for one to bring an application they must satisfy court that; the application is amenable for judicial review; the aggrieved person has exhausted the existing remedies available within the public body or under the law and that the matter involves an administrative public body or official among others.

In the present case it was argued by the respondents that the application was not amenable, and the applicant had not exhausted all the available remedies as are provides for by law. Thus, the application is premature. I have carefully read the provisions of **Section 182 (1)** of the Registration of Titles Act which provides that;

> *"If upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any dealing registered or recorded, or to have any certificate of title or other document issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the registrar, the registrar refuses so to do, or if the owner or proprietor is dissatisfied with any decision of the registrar upon his or her application, the owner or proprietor may require the registrar to set forth in writing under his or her hand the grounds of his or her refusal or decision, and the owner or proprietor may, if he or she thinks fit, at his or her own cost summon the registrar to appear before the High Court to substantiate and uphold those grounds."*

From, the above section it is clear that for anyone who is aggrieved by the decision of the registrar may require the registrar to set forth in writing under his or her hand the grounds of his or her refusal or decision, and the owner

or proprietor may, if he or she thinks fit, at his or her own cost summon the registrar to appear before the High Court to substantiate and uphold those grounds.

In the instant case the applicant did not prove to this court that any of the above options as provided under **Section 182** of the Registration of Titles Act were exploited before this application was filed. An application of this nature should be lodged as a last resort after all the available avenues have been exhausted. If the applicant felt that he indeed needed redress in a court of law in regard to his dissatisfaction with the registrar's decision, then the appropriate procedure should have been to file an application for contempt of court orders and not seeking for judicial review as the registrar did not act independently but rather acted in pursuance of the court order.

I find and hold that the application was prematurely brought before for this court and it is accordingly dismissed with costs.

I so order. Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

25/5/2022