

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT HOIMA
MISC. CAUSE NO.06 OF 2023
(Formerly Masindi Misc. No.006 of 2022)

1. KIIZA GEORGE
2. MUGABI STEPHEN
3. MAJ.GEN (Rtd) MUGISHA WLBERFORCE } APPLICANTS
FRED

VERSUS

1. THE COMMISSIONER LAND } RESPONDENTS
REGISTRATION
2. BOOMA FARMERS COMMUNAL LAND }
ASSOCIATION

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

[1] This is an application brought under **Ss.14, 33, 36 & 39 of the Judicature Act** as amended, **Rules 3, 4, 5, & 6 of the Judicature (Judicial Review) Rules, S.98 CPA and O.52 rr.1& 3 CPR** seeking inter alia, the following prerogative Orders and Judicial Reliefs.

- a) A *declaratory* order that the decision of the 1st Respondent cancelling the Applicants' certificate of title in respect of land comprised in **FRV MAS 49, Folio 4, Bujenje Block 1, plot 25, land at Wantembo-Booma, Buliisa District**, based on the allegations of or involving fraud, was *Ultra vires*, illegal, incurably invalid and void.
- b) An order of *Certiorari* doth issue to call for and quash the impugned decision of the 1st Respondent, as contained in the 1st Respondent's letter to the Applicants, under **Ref. Folio Mas 49/4** dated 22/12/2021 cancelling the Applicants' joint registered interest in the property comprised in **FRV MAS 49, Folio 4,**

Bujenje Block 1, Plot 25 land at Wantembo-Booma, Buliisa District, for being irrational and out rightly illegal.

- c) An order of *prohibition* doth issue against the implementation of impugned decision of the 1st Respondent as contained in the 1st Respondent's letter to the Applicants under **Ref. FRV MAS 49/4** dated 22/12/2021.
- d) An order of Permanent Injunction restraining the 1st Respondent from entertaining, adjudicating upon and cancelling the Applicants' joint title to the suit land basing on claims or allegations involving fraud as set out in the 2nd Respondent's complaint in question and or registering any instrument adversely affecting the Applicants' interest in or quiet possession and use of the suit land known as and comprised in **FRV MAS 49, Folio 4, Bujenje Block 1, Plot 25, land at Wantembo-Booma, Buliisa District**.
- e) Costs of this application be provided for.

[2] The grounds of this application are outlined in the accompanying affidavit of **Kiiza George** the 1st Applicant and briefly they are;

- a) The Applicants are joint registered proprietors of the land comprised in **FRV MAS 49, Folio 4, Bujenje Block 1, Plot 25, land at Wantembo-Booma, Buliisa District**, the suit land.
- b) That the Applicants have been in long occupation of the suit land which neighbours the land owned by **Mr. Kaahwa Francis, UPDF's Marine Brigade Headquarters, River Waaki** and the **main Road from Bukumi to Butiaba** where they have carried out agriculture in the nature of animal husbandry on a full basis.
- c) That on 24/4/2011, the Applicants jointly applied for grant of a freehold title from the Buliisa District Land Board in respect of the suit land which was free from other occupants and disputes.
- d) That pursuant to the above said application and upon appropriate Notices and Inspection, the Area Land Committee confirmed the existence of the land and, there being no dispute, the Area Land Committee recommended that the Applicants be availed the land as applied for.
- e) That the land was accordingly surveyed and a Freehold title (Plot 25, Block 1 measuring 93.5160 hectares) was eventually issued and registered jointly in the Applicants' names under **Instrument No. MAS 00002246**, dated 8/10/2019.

- f) That on 28/10/2021, the 1st Respondent issued a Notice of Intention to effect changes in the Register Book in respect of the suit land by way of cancellation of their joint title based on a complaint dated 2/8/2021 by a one **Magambo Samuel** through Justice Centres of Uganda advocates accompanied by his Statutory Declaration which briefly is to the effect that the **Applicants acquired the freehold certificate of title over the disputed land fraudulently with the intention to deprive the rightful community members of Wantembo-Booma villages of their communal interests in the said land by relying on forged signatures and stamp of the Secretary District Land Board, Buliisa District and rescinded minutes of the Buliisa District Land Board.**
- g) That “forgery” and falsehoods are essential elements of fraud and therefore, it is clear that the impugned decision of the 1st Respondent dated 22/12/2021 cancelling the Applicants’ title to the disputed land was entirely premised upon allegations of fraud brought before him yet, cancellation of a registered land title premised upon or involving allegations of fraud is a preserve of the High Court to hear and determine hence that the 1st Respondent has no powers to entertain such.
- h) That the 1st Respondent’s conduct, actions and decision dated 22/12/2021 cancelling the Applicants’ title to the disputed land constitutes an illegality, was improper, irrational, unreasonable and involved maladministration or abuse of his statutory authority.

[3] In opposition to the application, the Respondents filed their respective affidavits in reply deposed by **Sharon Christine Namambwe** of the office of the 1st Respondent and **Kajura Richard** a member/Treasurer of the 2nd Respondent which briefly are to the effect that:

- a) That the 1st Respondent is charged with statutory duty of keeping the sanctity of the land Register with special powers to cancel certificates of title issued illegally, irregularly or erroneously.
- b) That the office of the 1st Respondent received a complaint from the office of the prime minister forwarded by the community of Butiaba, Buliisa District requesting the office to rectify the Register by cancelling the certificate of title comprised in the suit land in the names of the Applicants for having been issued illegally.

- c) That in the complaint, it is alleged by the community that in 2003, they agreed to the presidential directives to allocate part of their land to Uganda Peoples' Defence Force (UPDF) however, they were shocked to learn that the remaining land belonging to the community had been titled under **FRV MAS Folio 4, Bujenje Block 1, Plot 5** in the names of the Applicants.
- d) That the 1st Respondent's decision was not therefore based on fraud as alleged by the Applicants but the cancellation of the Applicants' title was based on wrongful acquisition and illegalities.
- e) That the Applicants have not exhausted all the remedies available to them before coming to this honourable court since, instead of appealing against the decision of the 1st Respondent, they prematurely filed this application.

Counsel legal representation

- [4] The Applicants were represented by **Mr. Richard Brian Kabayiza** while the 1st Respondent was represented by **Ms. Nabaasa Charity** of **Attorney General's Chambers, Kampala** and **Ssekito Moses** of the 1st Respondent's office while the 2nd Respondent was represented by **Mr. Edwin Mutaryebwa** of **Justice Centres Uganda, Hoima**. The counsel filed their respective written submissions for consideration in the determination of this application as directed by court.

Issues arising from the pleadings of the parties

- [5] 1. **Whether the 1st Respondent's decision dated 22/12/2021 cancelling the Applicants' joint title in question was ultra vires, irrational, unreasonable and in contravention of the law.**
2. **What are the remedies available to the parties.**

Preliminary objection

- a) **The Applicants' alternative remedy of appeal under S.91(10) of the Land Act.**
- [6] Counsel for the 2nd Respondent raised a preliminary objection that the Applicants' application is incompetent before this honorable court since it adopted a wrong procedure pursuing the Applicants' remedy.

That the tenets of bringing an application for judicial review have it in principle that the remedies are available only if the aggrieved party does not have any other alternative. That under **S.91(10) of the Land Act**, the Applicants as aggrieved persons of the decision or action of the Commissioner (1st Respondent) had an available remedy of appeal. He relied on the authorities of **Re: Mustapha Ramathan, C.A.C.A No.29/1996 [1999] KALR p.517** and **Paul Saku Busagwa & Anor Vs Commissioner Land Registration & Anor, H.C.Misc. Cause No.40/2014**, and argued for the proposition that a litigant who wishes to apply for a writ of Certiorari, has first to exhaust his right of appeal before being eligible to apply for the writ. He therefore prayed that this court finds that the Applicants were bound to first exhaust the available remedy of appeal as opposed to the adopted procedure of judicial review and should uphold this preliminary objection.

[7] Counsel for the Applicants in rejoinder submitted that the District Land Tribunals referred to in **S.91(10) of the Land Act** do not exist today and therefore, the remedy of appeal is not available, that in the absence of the land Tribunals, this matter being suited for Administrative Review, there is nothing irregular or illegal that would vitiate the validity or competence of the application.

[8] Under **S.91 of the Land Act**, it is provided thus;

“(1) Subject to the Registration of Titles Act, the Commissioner shall, without referring a matter to a court or a Tribunal, have power to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title...”

(10) Any party aggrieved by a decision or action of the commissioner under this section may appeal to the District Land Tribunal within sixty days after the decision was communicated to that party.”

Indeed, I find that the **District Land Tribunals** referred to in **S.91(10) of the Land Act** do not exist as of today. It is trite that judicial review cannot be available where alternative procedures are available and more convenient; **Micro case Industries Ltd Vs Uganda Insurance Commission, HCMA No.31/2009** and in **Re Mustapha Ramathan, C.A C.A No.29/1996 (Reported) in [1999] KALR P.517** but it is apparent in this case that the right of appeal to the District Land Tribunals, in their absence, was in the premises not available to the Applicants. In

any case, as observed in **Deo Semakula Vs Beyogera Vs Kayongo & Ors, HCCS No.422/2013**, the provisions of **S.91(10) of the Land Act** by their wording are not mandatory and therefore do not operate or restrict or exclude the High Court's inherent jurisdiction under **S.98 CPA**. It therefore remains a question of court's discretion whether or not to invoke court's inherent jurisdiction depending on what would be the demands of justice; **National Union of Clerical, Commercial & Technical Employees Vs NIC, SCCA No.17/1993 [1993] IV KALR 60**. Besides, the Applicants having raised an issue of "illegality", this court would not close its eyes from investigating it on the mere grounds that there exists an alternative remedy for the Applicants to appeal.

- [9] In the instant case, I am satisfied nevertheless that there is no available remedy of appeal for the Applicants and it cannot be said that under **S.91(10) of the Land Act**, the remedy against the decision of the Commissioner (1st Respondent) would be an appeal to the High Court. The preliminary objection is in the premises accordingly overruled.

Merits of the Application

Issue No.1: Whether the 1st Respondent's decision dated 22/12/2011 cancelling the Applicants' joint title in question was ultra vires, irrational, unreasonable and in contravention of the law.

- [10] In the instant case, counsel for the Applicants inadvertently filed written submissions that were filed or meant for **H.C Misc. Cause No.1 of 2022** which they had withdrawn from court on 10th /2/2022. There are therefore, in the premises no submissions for the Applicants in the instant application. The 1st Respondent also never filed its respective submissions on record.

- [11] Counsel for the 2nd Respondent however submitted that the 1st Respondent's decision was not based on a fraud but that the Applicants' certificate of title was cancelled based on its wrongful acquisition and illegalities as enshrined under **S.91(9) of the Land Act**.

- [12] As to whether the 1st Respondent's decision to cancel the Applicants' certificate of title was based on wrongful acquisition and illegalities without fraud, court has to look at the complaint of the complainant addressed to the Commissioner Land Registration on behalf of the

community, the 2nd Respondent. It is however important to note that though the 1st Respondent claim in **para.5 of the affidavit in reply of Sharon Christine Namambwe** that

“the office of the 1st Respondent received a complaint from the Office of the Prime Minister forwarded by the community of Butiaba, Buliisa District requesting the office to rectify the Register by cancelling the certificate of title comprised in Freehold Register Volume MAS 59 Folio 4, Bujenje Block 1, lot 25...” (sic),

that complaint from the Office of the Prime Minister was not attached to the affidavit in reply for court’s scrutiny.

[13] Nevertheless, I have carefully perused and scrutinized the complaints raised by the 2nd Respondent community in respect of the suit property;

1. **Formal complaint** dated 2/8/21 on behalf of the 2nd Respondent by Justice Centres (Annexure “J” to the Affidavit in support),
2. **Statutory Declaration** dated 8/12/2021 by Mugambo Samuel on behalf of the 2nd Respondent (annexure “J.2” to the affidavit in support).
3. **Written submissions** dated 29/11/2021 by Justice Centres on behalf of the 2nd Respondent (Annexure “K2” to the affidavit in support).

[14] I find that all the complaints referred to above, raised issues entirely grounded upon and involving allegations of fraud.

In particular, **Magambo Samuel’s** (Secretary Land Board Buliisa District) Statutory Declaration dated 8/12/21 stated thus;

Paragraph 6: “The Applicants used the minutes “vide BLS/DLB/04/2014(09) which had been rescinded to obtain a certificate of title on the land in issue.

Paragraph 7: That the certificate of title obtained by the trio (Applicants) under paragraph 6 above was fraudulently obtained since it was done relying on the minutes.

Paragraph 8: That the certificate of title obtained by Major Gen. Mugisha Fred and 2 Ors was erroneously obtained since their application was not signed and sealed with an official seal of the district Land Board- Buliisa district.”

Paragraph 10: That though the applicants tendered in the application purported to be approved by the district land board of Buliisa, the same is forged and full of falsehoods.”

The above clearly disclose that the certificate of title by the trio (Applicants) was allegedly obtained fraudulently through an application that contained a forged signature and stamp under rescinded minutes of the Land Board. I find the entire of the above connoting “fraud”.

Besides, the 2nd Respondent’s Notice of Intention to effect changes in the Register in respect of the suit land (Annexure “H” to the Application) alluded to “falsehoods”, “concealment” of notice of hearing for the application for grant of freehold (Form 10), “forgery”, implying that the available inspection report (attached to the application) was forged etc which all in my view, connote “fraud” within the definition provided by **Black’s Law Dictionary 6th edition page 60** that includes

“Anything calculated to deceive whether by a single act or combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture...”

See **F.J.Kazibwe Vs Orient Bank & 5 Ors, SCRA No.4/2006** as per Katureebe JSC.

[15] From the forgoing, I find that it is clear that the impugned decision of the 1st Respondent dated 22/12/2021, concealing the Applicants title to the disputed land, was entirely premised upon allegations of fraud brought before him by the 2nd Respondent. **Catherine Bamugemereire J.A in Patrick Mukasa Vs Douglas Andrew Kanyike, CACA No.307/2018**, upon examination in detail of the special powers and exercise of the powers by the commissioner for land Registration as provided for under **S.91 of the Land Act** (as amended by Land Amendment) Act No.1 of 2004 observed thus;

“Notedly fraud is a grave allegation over which the Commissioner Land Registration has no powers. Under S.91 (2)(a) of the Land Act, the commissioner is not bound by any rules of evidence. Persons suspecting fraud are required to revert to the High Court for appropriate remedies. Section 59 of the Registration of Titles Act provides for the indefeasibility of a certificate of title only impeachable on account of fraud.”

While relying on the authority of **Hilda Wilson Namusoke & 3Ors Vs Owalla Home Investment Trust (E.A) Ltd, SCCA No.15/2017** she observed further that;

“Whereas it is noted that fraud was an illegality, the court set apart fraud as an illegality requiring a more critical level of review. It remains good law that where fraud is alleged the Registrar of titles ceases to have jurisdiction. Allegations of fraud are the province of the High Court.”

[16] In view of the above, I do find that the 1st Respondent Commissioner would have no powers under **S.91 of the Land Act** to hear complaints which as in the instant case, fraud is imputed. In the premises, I find or hold that the 1st Respondent’s decision to cancel the Applicants’ joint certificate of title to the suit land was without jurisdiction, he usurped the powers of the High Court and therefore, his conduct and actions were **ultra vires** and or **illegal**.

In spite of all the facts and the law as were brought to his attention by the Applicants’ counsel in his submissions during the “hearing” (Annexure K3 to the application), the Commissioner proceeded to decide to cancel the Applicant’s title on purported allegations of fraud, such conduct was irrational and or improper and an abuse of authority hence inoperative in the eyes of the law and therefore null and void.

[17] In conclusion, the impugned decision by the 1st Respondent purporting to cancel the Applicants’ joint title is declared ultra vires and or illegal, irrational and or improper and for these reasons null and void. The impugned decision is in the premises accordingly quashed, prohibited and expunged from the 1st Respondent’s register of titles Book or records.

Issue No.2; What remedies are available to the parties.

[18] **a) Prerogative orders;**

In view of the fact that the 1st Respondent’s decision and conduct has been found ultra vires and or illegal, irrational and or improper, it follows that the Applicants are entitled to the sought reliefs to wit;

- I. **A declaration** that the decision of the 1st Respondent cancelling the Applicants’ certificate of title in respect of land comprised in **FRV MAS 49, Folio 4, Bujenje, Block 1, plot 25 land at Wantembo Booma, Buliisa District**, based on allegations of or involving

fraud was ultra vires, illegal, irrational and or improper and therefore null and void.

- II. **An order of certiorari** doth issue quashing the impugned decision of the 1st Respondent as contained in the 1st Respondent's letter to the Applicants, under **Ref. FRV MAS 49/4**, dated 22/12/2021 cancelling the Applicants' joint registered interest in the suit property.
- III. **An order of prohibition** doth issue against the implementation of the impugned decision of the 1st Respondent as contained in the 1st Respondent's letter to the Applicants, under **Ref.FRV 49/4** dated 22/12/2021.
- IV. **An order of permanent injunction** doth issue restraining the 1st Respondent from entertaining adjudicating upon and cancelling the Applicants' joint title to the suit land basing on claims or allegations involving of fraud as set out in the 2nd Respondent's complaint in question and or registering any instrument adversely affecting the Applicants' interest in or quiet possession and use of the suit land.

b) Damages:

The application proceeded by way of affidavit evidence. No evidence was led to prove the general damages and or whether the title in question has in fact already been cancelled or not or whether by virtue of the decision of the 1st Respondent they have been evicted and or their quiet possession interfered with. In the premises, no order of damages is granted.

c) Costs:

It is trite that under **S.27 CPA**, costs follow the event. In the instant case, since the Applicants are the successful parties, they are awarded costs of the application

Dated and delivered at Hoima this **31st** day of **March, 2023**.

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Byaruhanga Jesse Rugyema
JUDGE.