

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

M/C 122/2021
(LAND DIVISION)

ABALEMA UNITED EFFORT LTDAPPLICANT

VERSUS

UGANDA LAND COMMISSION.....RESPONDENT

Before: Lady Justice Alexandra Nkonge

RULING

Introduction:

This application seeks an order for judicial reliefs by way of a writ of mandamus;
Special damages in the sum of 10% per annum of **Ugx 170,000,000/=** from 27th June, 2019;
General damages; and costs.

The affidavit in support of the application is filed by Mr. Kizza Daniel. Briefly, that the applicant was granted lease over **plot 175, Bombo Road LRV KCCA 77 Folio 1**, by the respondent, Uganda Land Commission (ULC) effective 1st July, 2014.

He avers that due to disputes with one of its tenants, Mr. Patrick Baligasima, (the 3rd defendant under the main suit) and the ULC, the applicant filed a suit against them vide, **HCCS No. 279 of 2016**.

The case was decided on 27th June, 2019 during one of the sessions held by this court and specific orders were made which to date however have not been complied with.

Representation:

The applicants were represented by **M/s Ouma, Tinyinondi & Co. Advocates**. As per affidavit of service, the respondent (ULC) duly acknowledged service on 22nd October, 2021. However, no response was filed.

- 5 The applicant side filed submissions in writing as directed by court which I have taken into consideration in arriving at the decision.

Consideration of the application:

10 The remedy of mandamus which the applicant seeks is a creation of the **Judicial Review Applications, Rules 3 (1) (a), 2 and 5** and from court's assessment, it is available when alternative procedures or more convenient remedies are missing. (**Ref: Micro Case Insurance Ltd vs Uganda Insurance Commission MA No. 31 OF 2009**).

15 Counsel for the applicant cited the case of **Kasibo Joshua vs Commissioner of Customs, MA No. 44 of 2004**, where it was declared that judicial review is concerned, not with the decision but the decision making process. Essentially the review involves an assessment of the manner in which the decision is made; it is not an appeal.

The jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic principles of legality, fairness and rationality.

20 The applicant for an order of mandamus must show that it enjoyed a right, the right is specified by the decree of court, a certificate of order against Government has been extracted and duly served on the respondents and that the respondents refused to honor the certificate of order by refusing to comply with the decree. (**Intex Construction vs Attorney General & Anor MA No. 737 of 2013.**)

25 As per the judgment of court in this instance delivered on 27th June, 2019 attached to the affidavit in support of the application as **Annexure B**, the following orders were issued:

1. An order directing the commissioner, Land Registration (2nd defendant) to cancel the land title in the plaintiff's name;

2. A declaration that the 4th and 6th defendants have an interest in the suit land;

3. *An order directing the commissioner, Land Registration (2nd defendant) to register the title in the names of the surviving original disabled persons as tenants in common with a Government encumbrance not to sale;*

4. *Any further lease extension/renewal should be in the names of the original members listed in the judgment;*

5. *The plaintiff together with the rest of the original members shall refund Ugx 170 million/= to the 3rd defendant;*

6. *The amount in 3 above shall attract an interest of 10% per annum from 12th August, 2014, the date when the money that is referred to as 'akasiimo' was paid to the plaintiff;*

7. *A permanent injunction restraining the 3rd defendant from interfering with the original members' possession of the suit property;*

8. *An order for vacant possession to issue against the 3rd defendant after the full refund of Ugx 170 million/=;*

9. *No orders to general damages;*

10. *No orders to costs of the suit.*

Following the delivery of the judgment, a decree of the above order was extracted on 31st July, 2019. (**Annexure C.**)

As a follow up subsequent to that decision, the deponent in this application who is also chairman of the *Abalema United Effort Ltd* together with the Secretary, one Kakeeto Gerald on 4th August, 2019 wrote to their counsel requesting them to proceed with processing of the land title in the names of their company, as decreed by court. (**Ref: Annexure D**). Also attached to that letter was the list of the members' in whose names the title was to be issued, as this court had directed.

Annexure A is evidence that a certificate of title that had been issued for a term of 5 years, *w.e.f* from 1st July, 2014, in the applicant company's names. A lease was entered on 1st April, 2015, with ULC as lessor and the applicant as lessee.

The record also indicates that learned counsel had written to the Secretary ULC on 5th August, 2019 notifying it about the 30th June, 2019 as the date on which the lease was due to expire.

The letter sought a renewal /extension of the lease to a full term of 99 years to facilitate development of the property. (**Annexure B**).

On 18th October, 2019, the Ag Secretary, Mr. Robert Nyombi had written to the applicant's lawyers assuring them that the ULC would abide by the said order. (**Ref. Annexure C**).

5 By that same correspondence he had also informed them that the matter had been discussed in the ULC meeting that had been held on 21st and 22nd August, 2019 but was deferred to its next meeting, to give time to study the judgment and verify the true names of the original members who would be entitled to the renewed lease. ULC thereupon requested the applicants to avail it with the copies of the passport photographs and National Identity Cards.

10 The record further demonstrates that on 23rd October, 2019, in response to that request, through the applicant's counsel, the required documents as well as the Lc letters for two of the members who had no documents were availed to the ULC in confirmation of their residence or status.

However, no action was taken by the ULC, until July, 2020 when the Ag. Secretary of ULC, Mr. Benon Kigenyi, wrote to the Commissioner, Land Registration indicating that the ULC under
15 *Minute 13/2020 (a)(87)* had approved the extension of the lease held by the applicant for a period of 49 years.

The office of the Commissioner, Land Registration was in that letter directed to issue the title in the names of ULC and the applicant members individually appearing on the title and take into account the judgment decree as issued.

20 Counsel for the applicant upon learning about the decision on 27th October, 2020 however raised concerns that the ULC being the controlling authority and trustee of the land on behalf of Government could not be registered as proprietor on any certificate of title.

That in any case this was a variation of the orders of court as granted. The learned counsel therefore requested the ULC to review its decision on that score and to comply with the orders
25 expeditiously.

Previous to that, on 27th March, 2020 a letter had been received, upon request as advice to the ULC, from the office of the Solicitor General. This was entitled: ***Request for Legal opinion in regard to the judgment in Civil Suit No. 279 of 2016 Abalema United Effort Ltd vs Uganda Land Commission and others.***

30 By that letter which was addressed to the Secretary, ULC, the respondent was advised on how to go about executing the orders of court. The steps as advised were to:

1. ***request the existing original disabled personsto furnish it with the names and details of all members that met the President. Due diligence should be conducted to ensure that the persons added other than those mentioned by court are not imposters.***

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2. ***extend/renew the lease in the names of the original disabled members.***

3. ***include a clause in the lease extension deed preventing the original disabled persons from selling the land and put an encumbrance on the title.***

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The ULC upon obtaining the details of the plaintiffs whose names were to appear on the title, took no further action to follow the advice as given to ensure compliance with the orders, despite the fact that they had given assurances to the applicant counsel that they were ready to comply with the said orders.

- 15 The ULC did not in any case explain to this court why they did not comply with the orders. It is trite law that a party who fails to comply with a court order without proper explanation does so at his/her own peril. Whether unclear, null or irregular a party, it cannot afford or be permitted to disobey an order for as long as it remains undischarged. ***(see also: Attorney General vs Kiruhura District Local Government & 2 others HCMA No. 35 of 2012).***

- 20 The applicants in this case successfully had obtained orders which the ULC was mandated both by law and, by order of court, it was incumbent upon them to execute. The respondent by its failure to comply with the order stood in the way of the applicants enjoyment of the benefits of their judgment, four years after the judgment was delivered.

- 25 It is sad to note that the applicant who were successful in their case and who have obvious challenges of mobility and therefore vulnerable have had to wait that long before enjoying the fruits of the judgment. It is unjustified and inexcusable also given the fact that a refund of ***Ugx 170,000,000/=*** had to be paid by the applicant which also attracted interest of 10% p. a from 12th August, 2014.

This application therefore succeeds; and the following orders of court are accordingly issued:

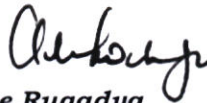
- 30 1. ***A writ of mandamus therefore issues in favor of the applicant and specifically against the Secretary of the ULC directing him to cause the renewal/extension of the lease as directed by court in Civil Suit No. 279 of 2016, within a period of 30 days after delivery of the ruling failing which he shall pay Ugx 50,000,000/= as damages for contempt of court orders.***

2. The ULC shall pay the interests accrued to the 3rd defendant from the date when the payment was due to date.

5 3. The 3rd defendant shall immediately vacate the premises upon payment of the Ugx 170,000,000/= by the applicant; and shall be free to proceed against the ULC for any accrued/unpaid interest on that amount.

10 4. The ULC shall pay costs of this application.

I so order.



Alexandra Nkonge Rugadya

15 Judge

14th February, 2023

Delivered by

email

Alexandra

T.

14/2/2023.