

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA; AT KAMPALA  
(LAND DIVISION)  
MISCELLANEOUS CAUSE No. 29 OF 2013**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL  
REVIEW OF PROHIBITION**

**ABBY KASOLO KIBERU..... APPLICANT**

*VERSUS*

**HON. IDAH NANTABA ERIOS  
(State Minister for Lands, Housing, ..... RESPONDENT  
& Urban Development)**

**BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY –  
DOLLO**

**RULING**

This application for judicial review is brought under Articles 28 (1) and 42 of the 1995 Constitution, sections 33 and 36 of the Judicature Act (Cap. 13 Laws of Uganda 2000 Edn.), and Rules 3, 5, and 6, of the Judicature (Judicial Review) Rules, S.I. No. 11 of 2009. It seeks a Court order of prohibition to issue against the Respondent, her agents, or any person taking advantage of her actions, from taking any further decision on, intermeddling with, or trespassing upon, the Applicant's land formerly comprised in Busiro Block 383 Plot No. 389 at Wasozi, Wakiso District; as of now, sub-divided into plots No. 5293, 5294, 5295, 5296, 5297, 5298, 5299, and plots No. 5748 up to 5791 (referred to herein as the suit lands); and some of which the Applicant has transferred to other persons.

The grounds in support of the application are that: –

1. The Applicant is the registered proprietor of the suit lands.
2. There are persons who have disputed, and have sought to impeach, the Applicant's title to the suit lands.
3. The said dispute has, at different times, been handled by Courts of law, and by the Commissioner of Land Registration; and the matter has been resolved in favour of the Applicant all the time.
4. The Respondent has, in defiance of the Court decisions and findings of the Commissioner of Land Registration to the contrary, unlawfully issued a directive threatening to cancel the Applicant's certificates of titles with regard to the suit lands.

The application is supported by an affidavit sworn by the Applicant; to which, however, the Respondent has not made any response, despite service of Court process on her. Because Court was satisfied that both direct and substituted service had been effected on the Respondent, but she had not responded, Court agreed with the prayer by Counsel for the Applicant, and the application proceeded ex-parte under the provisions of 0.9, r.20 (1) (a), of the Civil Procedure Rules.

In his affidavit, the Applicant has deponed that he bought the suit lands in 1990 from Ferdinand Lukyamuzi (now deceased) when they were comprised in Busiro Block 383 Plot 389, measuring 38.09 acres. However, when he tried to register the transfer of the title into his name in 2006, he found a caveat lodged thereon by Joyce Nakyanzi Namutebi who claimed interest therein by inheritance from one Frederick Lukyamuzi. The dispute was resolved in favour of the Applicant herein by the Nakawa Chief Magistrate's Court, vide Misc. Application No. 292 of 2007; whereupon, Joyce Nakyanzi Namutebi's caveat was vacated, and the land was registered in his name. In 2008, Joyce Nakyanzi Namutebi sued him in Entebbe Chief Magistrate's Court to recover the suit land; but the Court dismissed the suit.

He further deponed that in 2008, the Commissioner for Land Registration investigated and verified that his title to the suit land is valid. In 2009, the Wakiso Staff Surveyor examined the Karamazo and area schedules at Wakiso, and confirmed his title as genuine. In 2010, on the instructions of the Inspector General of Police, the Police investigated and established that Joyce Nakyanzi Namutebi's claims over the suit lands were fraudulent; and even recommended that she should be prosecuted. In 2011, Godfrey Bogere as the administrator of the estate of the late Joyce Nakyanzi Namutebi, petitioned H.E. the President over the suit lands; but State House officials investigated and confirmed that the Applicant holds a valid title thereto.

Despite all the aforementioned processes, which have consistently established his good title to the suit land, the Respondent summoned him in 2013 in writing for a meeting, and in the meeting she accused him of land grabbing, denied him the opportunity to present his case, and threatened to cancel his titles to the suit lands. Subsequent to this, the Attorney General advised the Respondent that the claim by Godfrey Bogere, as was the claim by the late Joyce Nakyanzi Namutebi, over the suit lands was fraudulent. The Applicant has annexed documentary evidence, vide annexures 'A' to 'O' to his affidavit, as proof of the various processes he has referred to, right from the sale agreement between the late Ferdinand Lukyamuzi and himself, up to the advice by the Attorney General to the Respondent.

Counsel for the Applicant has proposed two issues for determination by this Court. These are: –

1. Whether, or not, the instant application is competent.
2. Whether an order of prohibition should issue against the Respondent and all her agents as prayed.

**1. Whether, or not, the instant application is competent.**

Rule 5(1) of the Judicature (Judicial Review) Rules of 2009, provides as follows: –

*"An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose ... unless the Court considers that there is good reason for extending the period within which the application shall be made."*

In the instant matter, the Applicant has sought Court protection within three weeks or so from the time the threatened action of the Respondent was first communicated to him. He has annexed documentary evidence to his affidavit in support of the application, as proof of the Respondent's threatened intervention. First, is the Respondent's letter dated the 2<sup>nd</sup> day of April 2013, to the Applicant and others, summoning them to appear before her for a meeting on the 9<sup>th</sup> day of April 2013 at 10:00 a.m. She threatened in the letter that *'failure to do so will cause cancellation of titles issued to you.'* Second is her letter dated the 15<sup>th</sup> day of April 2013, summoning them to appear before her on the 5<sup>th</sup> day of May 2013; and in which, she reiterated the threat to cancel the titles to the suit land if those she summoned did not make a response within fourteen days of the letter.

Then, on the 1<sup>st</sup> day of October 2013, the Respondent wrote to the Resident District Commissioner Wakiso, Regional Police Commander Katwe, and District Police Commander Kajjansi; and copied this letter to the Commissioner Land Registration, as well as the family of the late Namutebi Nakyanzi Joyce. Owing to the self-explanatory revelation in the said letter, I feel I should reproduce it here below in extenso: –

***"RE: LAND AT KITENDE, WASOZI, WAKISO DISTRICT – BLOCK 383  
PLOT 389, BUSIRO.***

*The above captioned matter is now being handled by your office and Police Officers are continuing to harass the rightful owners who have been to this*

*office and we have proved that our Land Officers have colluded with Abby Kasolo Kiberu to fraudulently transfer land from Fred Lukyamuzi to other beneficiaries. i.e. Ferdinand Lukyamuzi. Ferdinand Lukyamuzi expressed that he has no interest in this land when we called him to account for fraudulent acquisition of this land.*

*This serves to remind you that these titles will be cancelled and no one should use them to continue with the harassment of the beneficiaries, i.e the family of the late Lukyamuzi Fred, who are now the children of the late Namutebi Nakyanzi Joyce. This is therefore to request you to help the bearers of this letter to re-enter their land.*

*By copy of this letter, the **Commissioner Land Registration** will start the cancellation process. We will in the process of cancellation visit the locus also to establish whether this directive has been implemented forthwith.*

*Nantaba Idah Erios (Hon.)*

**MINISTER OF STATE FOR LANDS, HOUSING AND URBAN DEVELOPMENT (LANDS)."**

From the evidence set out above, it is clear that the Applicant has shown on the face of the pleadings that he claims certain rights, on which the Respondent threatens to, wrongfully, infringe. Article 42 of the Constitution provides that: –

*"Any person appearing before any administrative official or body has a right to be treated justly and shall have a right to a Court of law in respect of any administrative decision taken against him or her."*

Whether, on examination, this right will be established to be valid or not is a different matter, which is not for this Court at this stage to go into. The remit of this application is challenging the Respondent's legal competence to effect the threatened action, for which the Applicant has dragged her to Court. This is a

matter, which the law enjoins this Court to pronounce itself on; and so, this application is properly before this Court.

**2. Whether an order of prohibition should issue against the Respondent and all her agents as prayed.**

The remedy of prohibition is one, which Courts grant by way of judicial review to protect a person who is threatened by an unlawful or wrongful action by a public body. In the case of *John Teira & Anor. vs Makerere University Council – H. C. Misc. Cause No. 49 of 2010*, Court pointed out that it is enjoined to apply the principle of judicial review where a public body acting in a judicial or quasi judicial capacity, has either breached any one of the principles of natural justice, or has acted ultra vires in its decision making. In that case, Bamwine J (as he then was) stated as follows: –

*"In a judicial review, the Court focuses on the decision making process and not the decision itself. It involves an assessment of the manner in which a decision is made ... to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. If the principles of natural justice are flouted ... the decision must be declared to be no decision at all. "*

In the matter before me, the Applicant's uncontroverted deposition is that the Respondent denied him the opportunity to state his case in the meeting she had convened. Otherwise, he would have explained to her that the Courts of law, as well as the Commissioner of Land Registration, and the Police after an exhaustive inquiry, had established that he holds a valid title to the suit land. Instead, he was condemned as a land grabber and threatened with cancellation of the titles to the suit land. In this, it is clear the Respondent acted in contravention of the natural justice principle that no one must be condemned unheard; which is securely enshrined in the Constitution by the provision of Article 42 thereof reproduced above.

Furthermore, the Respondent clearly acted with bias in the conduct of her perceived administrative function; and allowed her functionaries to call the Applicant a land grabber, whereas there was no due process to establish such an adverse pronouncement. She had a predetermined position against the Applicant. In law, she was already ill qualified to conduct any inquiry into the matter in view of this act of bias, as the Applicant could not expect to get justice before her. Second, is that the Respondent has acted outside of the powers conferred upon her by law, in as much as she constituted herself into a quasi-judicial body, and has threatened to cancel the Applicant's titles to the suit land. The 1995 Constitution of Uganda provides for what governance in a democratic dispensation ought to be.

The pillars, or fulcrum, of government, are founded on the principle of separation of powers, which provides for the three arms of government; and each, with clearly laid down duties and functions. Thus, it is wrong for the executive arm of government to arrogate unto itself adjudicatory functions, which by law is the purview of the judiciary, as the other arm of government, through the Courts of law established by the Constitution or laws made under it. Any of the three arms of government, which conducts itself outside of the purview accorded it by the Constitution, acts ultra vires the provisions of the Constitution and law. Such action or decision cannot be allowed to stand. The Respondent had no business arrogating unto herself, a function which is vested in the Courts of law. What she ought to have done, was either to advise the contending parties to seek judicial intervention, or to refer the matter to the Commissioner for Land Registration for remedial action.

The Commissioner of Land Registration has the mandate to take remedial action under the provisions of section 91 (1) of the Land Act, which provides that: –

*"Subject to the Registration of Titles Act, the commissioner shall without referring a matter to a court or a District Tribunal, have power to take such steps as are*

*necessary to give effect to this Act, whether by endorsement or alteration or cancellation of title, the issue of fresh certificates of title or otherwise."*

Section 91(2) of the Land Act, as amended by the Land (Amendment) Act, 2004, empowers the Commissioner of Land Registration, upon giving the parties affected twenty-one days notice of the intention to take appropriate action, to rectify a wrongful or illegal endorsement on or transfer of a title. Section 2 (a) of the Land Act, which was introduced by the Land (Amendment) Act, 2004, provides that: –

*"The commissioner shall conduct a hearing, giving the interested party under subsection (2) an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law."*

Section 2(b) of the Land Act, as amended, provides that: –

*"Upon making a finding on the matter, the Commissioner shall communicate his or her decision in writing to the parties, giving reasons for the decision made, and may call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party."*

Thus, the Land Act confers a quasi-judicial function upon the Commissioner of Land Registration only, to inquire into and determine who of the competing parties has a valid claim to the suit land. There is no law that accords a government Minister such a function. The Respondent quite evidently acted outside the remit of her official duties; and in this, she acted with utter impunity, and with disregard to the advice offered to her by the Attorney General as the chief advisor to government. However, even that advice by the learned Attorney General unfortunately leaves a lot to be desired. In view of the flagrant breach of the law, in which the Respondent had mired herself, the Attorney General ought to have

impressed on her, in no uncertain language, to back off the dispute as she was blatantly acting ultra vires her statutory functions.

While this application seeks a prohibitory order against the Respondent, I notice from the Respondent's letter to the Commissioner Land Registration, reproduced above, that she has already made a decision to cancel the Applicant's title in the suit land, and has directed the Commissioner to act upon that decision. For this, a prohibitory order alone would not suffice; lest it issues when the Commissioner Land Registration has already heeded the unlawful order of the Respondent. This Court therefore issues, alongside the prohibitory order, an order of certiorari quashing the Respondent's administrative directive to the Commissioner Land Registration to cancel the Applicant's title to the suit land.

In the result, I allow this application and make the following declarations and orders: –

- (i) The Respondent has acted ultra vires her administrative mandate, in conducting a hearing to determine the rightful proprietor of the suit land.
- (ii) The Respondent conducted the purported hearing with bias.
- (iii) An order of certiorari hereby issues quashing the Respondent's administrative directive to the Commissioner Land Registration to cancel the Applicant's title to the suit land.
- (iv) An order of prohibition hereby issues against the Respondent's conducting any hearing regarding or intermeddling with the suit land.
- (v) The Respondent shall pay the applicant's full costs of the application.



**Alfonse Chigamoy Owiny – Dollo**

**JUDGE**

**24 – 11 – 2014**