

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 342 OF 2022

[Arising out of Miscellaneous Cause No. 1 of 2022]

(Coram: Buteera, DCJ; Bamugemereire and Gashirabake, JJA)

VAMEE INDUSTRIES LIMITED =====APPELLANT

VERSUS

1. COMMISSIONER LAND REGISTRATION. } ==RESPONDENTS
2. ATTORNEY GENERAL }

[Appeal from the Ruling and orders of the High Court of Uganda at Mukono Miscellaneous Cause No. 1 of 2022 (Florence Nakachwa, J) dated 13th July 2022]

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA

1. Background.

1] This is an appeal arises from the ruling of Hon. Lady Justice Florence Nakachwa in the High Court of Uganda at Mukono in Miscellaneous Cause No. 1 of 2022 delivered on 13th July 2022.

2] The Appellant herein lodged the Application in the High Court at Mukono against the Respondents seeking the following orders;

a) A declaration that the orders of the 1st Respondent as constituted in an amendment of register letter dated 25th August 2021 was illegal, unlawful and calculated to expropriate the Applicant's land without due compensation;

b) A declaration that the 1st Respondent did not have the legal mandate to make the orders it did as the Applicant was the lawful

5 registered proprietor of land comprised in Block 115 Plot 458
Land at Nantabulirwa and the said title was not issued in error or
fraud established against the Applicant;

10 c) A declaration that the 1st Respondent could not constitute itself in
a quasi-judicial organ to cancel the Applicant's titles issued under
Article 240 of the Constitution and in contravention of Article 241
of the Constitution without any evidence of fraud or error on
record.

d) An order quashing the respondent's order of cancellation of the
Applicant's Certificate of title to reinstate the same.

15 e) An order of prohibition and injunction prohibiting the
Respondents from issuing any such orders in respect of the
matter complained.

f) An injunction restraining the respondents from harassing,
intimidating, arresting the agents, servants and employees

20 g) Costs of the Application

h) Any other relief deemed fit by the Honourable Court.

3] The Application was lodged on the basis of facts contained in the
Affidavit in support deposed by Vinay Dawda, a Director of the
25 Appellant, wherein it was stated that;

a) The Appellant is the registered proprietor of land comprised in Block
113 Plot 485 Land at Nantabulirwa.

30 b) The Appellant's title was cancelled by the 1st Respondent without any
error on record indicating that the Appellant's title was issued in
error or fraudulently procured.

c) That in contravention of relevant law, the 1st Respondent adjudicated
upon a matter in which they did not have jurisdiction by a
cancellation notice without there being any legal or lawful order
35 cancelling the Appellant.

- 5 d) The Appellant was not afforded an opportunity to be heard as required by Article 28 and 44 of the Constitution.
- e) That there was overwhelming evidence that the land was lawfully acquired through the Uganda Land Commission and never belonged to any entity.
- 10 f) That there is no dispute concerning the land which the Appellant owns and the respondent had no basis whatsoever to cancel the applicant's land title.
- g) The law does not empower the 1st Respondent to cancel titles on grounds that they belonged to another individual, communal or
- 15 another entity without a court order to that effect.
- h) The Appellant has never been served with any application to cancel their title or any other subsequent hearing notice and the Appellant only discovered that the 1st Respondent had issued an amendment of the register dated 25th August 2021 without being duly informed.
- 20 i) In contravention of the natural principles of justice and or the law, the Applicant was not granted a fair hearing, and the amendment of the register should be set aside.
- 4] The essence of the facts pleaded was that the Appellant's Certificate of
- 25 title was cancelled without any error on record being ascertained by the 1st Respondent in violation of Article 26 of the Constitution of the Republic of Uganda. In addition, the Appellant was not afforded an opportunity to be heard as is required by Articles 28 and 44 of the Constitution.
- 30
- 5] The 1st and 2nd Respondents lodged an Affidavit in reply deposed by Wamala Ali, a Senior Registrar of Titles in the Ministry of Lands, Housing and Urban Development wherein it was stated that:

- 5 a) Sometime in 2016, M/S Wameli & Co. Advocates filed *Execution Miscellaneous Application No. 95 of 2016 against the Administrators of the Estate of the late H.H. Sir Daudi Chwa II* seeking orders of execution of the decree obtained from the High Court (Family Division) in Originating Summons No. 9 of 2014. The
10 preferred mode of execution was attachment and sale of estate land described as Kyaggwe Block 113 Plots 9, 457 and 458 at Nantabulirwa.
- b) The High Court issued orders directing the Commissioner surveys and mapping to confirm whether the land comprised in Kyaggwe
15 Block 113 Plots 457 and 458 belonged to the estate of the late H.H Sir Daudi Chwa II. On 1st June 2015, the Commissioner issued deed plans and cadastral sheets which indicated that the land belonged to the Estate of the late H.H. Sir Daudi Chwa II in his private capacity.
- c) By order of Court dated 12th April 2016, the Deputy Registrar
20 Execution Division issued a warrant of attachment and sale of land comprised in Kyaggwe Block 113 Plots 9, 457 and 458 at Nantabulirwa. By another order dated 20th October 2016, the Deputy Registrar issued consequential orders directing the Commissioner
25 Land Registration and/or the Principal Registrar Mukono land office to process and issue certificates of title for land described as Kyaggwe Block 113 Plots 9, 1097, 1098, 1099, 1100, 1101 and 1102 land at Nantabulirwa in the names of listed respective buyers, namely; Ubora Holdings Ltd, Abubakari Pendo Zubairi, Abdul Karim Hussein, Winfred Bugingo and Luwangula Estates Ltd.
- d) It was discovered that the land described in the order by the Deputy
30 Registrar was already titled and owned by Mash Investments Ltd, Vamee Industries Limited, Steel and Tube Industries Limited, JK Technologies and Inter Africa Investments and about the existence of the Court order.

- 5 e) The leasehold title holders in separate suits sued the Commissioner
Land Registration for orders that their titles should not be cancelled
and orders were issued that cancellation should be halted. Among
these suits was Vamee Industries Limited v Attorney General & 2
others v Commissioner Land Registration H.C.C.S No. 204 of 2017.
- 10 f) The Applicant is by the present action seeking to enforce individual
rights exclusively under the domain of private law. The said rights
derive from cancellation of a certificate of title of land comprised in
Block 113 Plot 485 situate at Nantabulirwa leased to the applicant.
- 15 g) The remedy of judicial review is not available to the Applicant.
Jurisdiction in judicial review is exercised in a supervisory manner
and not to vindicate the rights of the party seeking judicial review.
The Appellant's grievances can be addressed by an ordinary action
resolution of which will entail the court to investigate the
circumstances of cancellation of title.
- 20 h) It is trite that prerogative orders will only issue where there is no
alternative remedy and the Applicant has not demonstrated lack of
an alternative remedy or that the alternative is inconvenient, less
beneficial or less effective. The Application is untenable and an abuse
of the process of the court.

25

2. Decision of the High Court.

- 6] In the ruling delivered on 13th July 2022, Trial Judge observed that the
Appellant also filed Miscellaneous Cause No. 2 of 2022 between the
30 same parties and arising from the same facts in the application and
seeking the same orders, with the only difference being that the other
application sought orders in judicial review. The learned Judge held that
at the heart of the application is a claim for land and the format of the
application does not allow the court to fully investigate all the court
35 orders issued in regard to the suit land and the circumstances in which

5 they were issued, and considering that she had no opportunity to look at those court files, the suit should have been lodged by way of ordinary
10 Plaint so that in the interest of justice, the court can effectively and completely adjudicate upon the disputes regarding the suit land. The application was dismissed.

3. Grounds of Appeal

7] The Appellant lodged a Memorandum of Appeal on 2nd September 2022 and raised the following grounds therein:

1. The trial Judge erred in law when she held that the applicant ought to have filed the Application for enforcement of human rights by way of ordinary plaint.
2. The learned Judge erred in law and fact when she failed to find that the Appellant's right to be heard enshrined in the constitution was violated.
3. The learned Judge erred in law and fact when she failed to find that the Appellant's right to fair treatment was violated.
4. The trial judge erred in law and fact when she refused to grant the Appellant any remedies for their grievances.

8] I have deliberately set out 4 grounds out of the 5 grounds of Appeal as set out in the Memorandum of Appeal because as I observed earlier the Appellant's grounds 2 and 3 are identical/ repeated.

4. Representation

9] When this Appeal was called for hearing on 22nd November 2022, Mr. Yesse Mugenyi appeared for the Appellant. The 1st Respondent was

5 represented by Mr. Moses Ssekitto. Mr. Johnson Natuhwera from the
Attorney General's Chambers appeared for the 2nd Respondent.

10] At the hearing, the Appellants adopted their written submissions as
lodged in the Court's registry. Counsel for the 1st Respondent also
10 adopted their written submissions as lodged. The 2nd Respondent was
given leave to file their written submissions, which was duly done. I
have considered the submissions of the parties duly lodged in the court
and the authorities cited thereunder in the preparation of this judgment.

15 **5. Submissions by the Appellant**

11] In relation to Ground One, counsel for the Appellant submitted that it is
not in dispute that the Appellant lodged the Application for human
rights enforcement by way of Notice of Motion alleging the violation of
the right to property provided under Article 26 of the Constitution, the
20 right to be heard provided under Article 23 of the Constitution, the right
to fair treatment under Article 44 of the constitution, which were all
premised on the provision of Section 3 of the Human Rights
(Enforcement of Rights) Act 2019. It was submitted that the learned
trial Judge did not address herself properly on the law relating to the
25 enforcement of human rights, particularly Section 6(5) of the Human
Rights (Enforcement) Act 2019. The Appellant averred that the Human
Rights (Enforcement) Act clearly provides for an application as opposed
to a civil suit, and therefore the decision was erroneous. It was further
submitted that the materials before the court, in the affidavits, were
30 sufficient to enable the court make an informed decision. Counsel relied
on **Sinba (K) & Others v Uganda Broadcasting Corporation,
Civil Appeal No. 3 of 2014** in support of this argument.

12] In relation to Ground two, it was submitted that the learned Judge erred
35 in law and fact when she failed to find that the appellant's right to

5 property was violated. The appellant submitted that they were the
registered proprietor of land comprised in Block 113 Plot 459 land at
Nantabulirwa and are still in possession of the land. There is no court
order cancelling their certificate of title on grounds of fraud and the title
10 cannot be impeached unless section 176 and 177 of the Registration of
Titles Act is complied with. The Appellant submitted that the
Respondents expropriated their property without following due process
and the provisions of the land acquisition Act, and in violation of Article
26 of the Constitution. The Appellant further submitted that a warrant
of attachment and sale could not be issued to attach the Appellant's land
15 as they were not party to the proceedings in the originating Summon
No. 9 of 2014.

13] In relation to Ground three, counsel submitted that the learned Judge
erred in law and fact when she failed to find that the appellant's right to
20 be heard as enshrined in the Constitution was violated. Counsel cited
the case of **Hon. Anifah Bangiranah Kawooya v Attorney
General & National Council for Higher Education,
Constitutional Petition No. 42 of 2010** for the definition of a fair
hearing. It was submitted that the Appellant's right to a fair hearing was
25 compromised and adulterated due to undue influence that resulted in
the 2nd Respondent endorsing a consent judgment in which they agreed
to activate new titles in the land registry. Counsel further submitted that
the facts of this case are on all fours with the case of **Leads Insurance
Limited v Insurance Regulatory Authority, Civil Appeal No. 91
30 of 2013.**

14] In relation to Ground Four, the Appellant submitted that their right to
fair treatment enshrined in Article 42 of the Constitution was violated.
It was submitted that the letter dated 15th March 2017, which requested
35 the Appellant to surrender their title on the grounds that they are in

5 receipt of an order to issue and transfer land had no basis in law.
Furthermore, the Appellant obtained an order to maintain the status
quo. However, the Respondents proceeded to cancel the Certificate of
title and did not vacate the order. There is no evidence to show that the
2nd Respondent invoked the procedure under Section 91 of the Land Act.
10 There is no evidence that prior 21 days' notice in the prescribed form
was served on the Appellant, that the Appellant was availed with the
opportunity to be heard and there is further no evidence to show that
the 2nd Respondent communicated their decision to cancel the
Appellant's certificate of title and the reason for that decision. It was
15 further submitted that the reason that the Respondents were acting out
of fear, duress and intimidation is not tenable and is not a ground
provided for under the Constitution as a basis for denying the Appellant
the right to be treated fairly.

20 15] The Appellant prayed for a declaration that the order of the 1st
Respondent constituted in an amendment of the register dated 25th
August 2021 was illegal and unlawful and was calculated to expropriate
the Appellant's land without due compensation, a declaration that the 1st
Respondent did not have the legal mandate to make a decision
25 embodied in their amendment of the register of 25th August 2021 as the
Appellant was the lawful registered proprietor of the land as comprised
in Block 113 Plot 458, a declaration that the 1st Respondent could not
constitute itself in a quasi-judicial organ to cancel their title having
erroneously issued duplicate certificates of title. In addition, the
30 Appellant prayed for consequential orders to expunge all illegal titles
created out of the Appellant's certificate of title arising from a warrant of
attachment of sale in Originating summons No. 9 of 2014 and an order
of prohibition restraining the Respondent from issuing any orders in
respect of the matters in the suit and costs of the appeal.

5 **6. Submissions by the 1st Respondent.**

- 16] In relation to Ground One, the 1st Respondent submitted that it only followed Court orders strictly in cancelling the Appellant's certificate of title. It was submitted that the Appellant lodged this application for
10 judicial review as a disguised application for human rights enforcement which constitutes an abuse of court process. It was further submitted that the orders sought of the court are discretionary in nature and the court is at liberty to refuse to grant them depending on the circumstances of the case. The Application sought orders specific to
15 judicial review which are stipulated in Paragraphs 4, 5 and 6 of the Notice of Motion wherein they sought orders quashing the respondent's order of cancellation of the title and to re-instate the same, order of prohibition and injunction as well as an injunction to prevent the respondents from harassing, intimidating, arresting agents, servants
20 and employees.
- 17] It was submitted that the 1st Respondent was compelled by Court order to cancel the certificate of title of the Appellant, and as such, could not have infringed on the right of the Appellant to own property as alleged.
25
- 18] It was further submitted that the Appellant was afforded a right to be heard through the issuance of a notice dated 15th March 2017 (paragraphs 17 and 18 of the Affidavit in reply), which informed the Appellant of the existence of a court order ordering cancellation.
30 Counsel cited the decision in **Housing Finance Bank Ltd & Another v Edward Musisi, Miscellaneous Application No. 158 of 2010**, to assert the general principle regarding respect for Court orders.

5 19] The 1st Respondent further contended that they already implemented the court orders of cancellation as led in evidence and therefore the orders of certiorari or an injunction sought cannot suffice. Such remedies will only be granted to prevent ongoing or future violations.

10 **7. Submissions by the 2nd Respondent.**

20] The 2nd Respondent, in relation to ground one, submitted that the learned trial Judge did not err when she held that the Appellant ought to have filed a suit by way of ordinary plaint. The appellant is seeking to substitute normal procedure for judicial review by seeking for orders specific to judicial review in an application for human rights enforcement which is an abuse of court process and incurably defective. The Respondent set out the orders sought under paragraphs 4, 5 and 6 of the Notice of Motion and submitted that these remedies are unique to judicial review. It was further submitted that the Commissioner Land Registration was compelled by court to cancel the certificate of title of the Applicant. Counsel cited the decision in **Editors Guild Uganda Limited and Another v Attorney General, High Court Miscellaneous Cause No. 400 of 2020** to submit that the value of the right to apply to the High Court for enforcement of human rights will be diminished if it is allowed to be misused as a general substitute for normal procedures for invoking judicial control of administrative action.

30 21] In relation to ground 2, the 2nd Respondent submitted that the learned trial Judge exercised her discretion judiciously when she found that the application does not allow the court to fully investigate all the orders in respect of the suit land and the applicant ought to have instituted the action as an ordinary Plaint. The learned trial Judge correctly addressed her mind to the law, and the Appellant's right to own property is

5 guaranteed under Article 26 of the Constitution which was not violated.
The evidence in paragraph 12 of the Affidavit in reply shows that the 1st
Respondent received a court order, which had to be implemented.

22] In relation to ground 3, counsel submitted that the Registrar had
10 powers to make decisions pursuant to Section 91 of the Land Act
without recourse to any court or tribunal. The office of the Registrar can
also conduct a hearing to determine the rights of the parties bearing in
mind the principles of natural justice key among which is the right to a
fair hearing. In this case, the 1st Respondent issued a notice of hearing
15 dated 9th February 2021 and the hearing was scheduled for 5th March
2021. However, despite being duly served, the Appellant did not appear.
Therefore, the right to a fair hearing was not violated in this case.

23] Relating to grounds 4 and 5, counsel for the 2nd Respondent submitted
20 that the present appeal bears elements of judicial review in an
application for enforcement of human rights, and the remedy of judicial
review is not available to the Appellant.

8. Consideration of the Appeal

24] I have carefully considered the record, the submissions and the law and
authorities referred to by the respective counsel and those not
canvassed.

25] Considering that this is a first appeal from the decision of the High
Court, this Court is alive to its duty, which is worth reiterating, that it is
expected to arrive at its own conclusions from the evidence on record.
The duty of this court also extends to place/ attach the greatest weight
to the opinion of the trial judge who saw/ perceived the witnesses,
35 pursuant to the provisions of Rule 30 (1) (a) of this Court's rules. The

5 decisions in **Watt v Thomas [1947] 2 ALL ER 584 & Okeno v Republic [1972] EA 32** provide illustration of the duty of this court.

26] The duty may be summarized as the duty to re-evaluate the evidence and reconsider all the materials which were before the trial Judge as per the Supreme Court in **Kifamunte Henry v Uganda, SCCA No. 10 of 1997**;

Being mindful of the court's duty above, I shall proceed to evaluate the grounds of appeal as lodged by the Appellants.

15 **9. Ground One.**

27] *The trial Judge erred in law when she held that the applicant ought to have filed the Application for enforcement of human rights by way of ordinary plaint*

The Appellant submitted that the learned trial Judge erred when she failed to consider the provisions of **Section 6(5) of the Human Rights (Enforcement) Act 2019**. The Appellant further averred that the Human Rights (Enforcement) Act clearly provides for an application as opposed to a civil suit, and therefore the decision was erroneous. It was further submitted that the materials before the court, in the affidavits, were sufficient to enable the court make an informed decision. Counsel relied on **Sinba (K) & Others v Uganda Broadcasting Corporation, Civil Appeal No. 3 of 2014** in support of this argument.

28] On the other hand, the Respondents submitted that Appellant lodged this application seeking for prerogative orders under judicial review as a disguised application for human rights enforcement which constitutes an abuse of court process. It was further submitted that the orders

5 sought of the court are discretionary in nature and the court is at liberty
to refuse to grant them depending on the circumstances of the case.

29] The record of appeal (Pg. 7) shows that the Applicant sought, in an
application for enforcement of human rights, orders of a declaration
10 that the order of the 1st Respondent dated 25th August 2021 was illegal
and unlawful, an order quashing the Respondent's order of cancellation
of the Appellant's certificate of title and to reinstate the same, an order
of prohibition, an injunction, among others.

15 30] I agree with the finding of the learned trial judge that the Application is
principally a claim for recovery of land disguised as an application for
enforcement of human rights. It would be erroneous, in my view, for the
High Court, or this court, to order cancellation of the titles of the
registered proprietors of the land formerly owned by the Appellant,
20 whether as a form of a consequential order or not, without hearing from
the current registered proprietors, or other parties affected by the orders
of court, as it would be an infringement of their respective rights to a
fair hearing and the right to own property under Article 28 and 26 of the
Constitution respectively.

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31] In my opinion, an ordinary suit should be the best way to settle issues of
ownership of land and deprivation of land, even on account of errors or
misfeasance by the Registrar of Titles. An ordinary suit would subject
the parties' evidence to scrutiny and subject the witnesses to cross
30 examination. Whereas I am alive to the fact that cross- examination may
occur on the basis of affidavit evidence in an application for
enforcement of human rights, I am of the considered view that an
ordinary suit would afford the parties the best opportunity to traverse
the facts and evidence and enable the Court arrive at a proper decision.

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5 32] I agree with the learned trial Judge that the Court is unable to fully
investigate, review, analyse and make findings on the court orders
issued in regard to the suit land and giving rise to the cancellation of the
Appellant's title, which is challenged in the application for enforcement
of human rights. I note that the relevant suits, court files and orders in
10 the suits referenced, that is; *Execution Miscellaneous Application No. 95 of 2016*, *Family Division Originating Summons No. 9 of 2014*, *HC Miscellaneous Application No. 278 of 2015 Wameli & Co. Advocates v the Administrators of the Estate of the late H.H. Sir Daudi Chwa & 3 others*, *High Court Civil suit no. 61 of 2017*; *Mash investments v Commissioner Land Registration, Civil suit No. 204 of 2017*; *Vamee industries v Attorney General & Another, Civil Suit No. 246 of 2017*; *Steel & Tube Industries Limited & 2 others v Commissioner Land Registration, High Court Miscellaneous Application No. 935 of 2019*, *High Court Miscellaneous Application No. 1316 of 2017*, *High Court Miscellaneous Cause No. 137 and 136 of 2017*, among others, do not
15 form part of the record of appeal in this case, and it would be an error to make a finding on those orders of court without a complete examination, including examination and cross examination of witnesses, to establish the circumstances under which they were issued.
20 I further find that the Court orders referenced affect a much wider description of land, above and beyond the portion formerly owned by the Appellant. Matters outside the record of appeal cannot be the basis of adjudication by the court. **See R v Pandya [1957] EA 336**

30 33] The Appellant submitted that **Section 6(5) of the Human Rights' Enforcement Act** which provides that no suit instituted under the Act shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or technicality was not duly considered by the trial Judge. On the other hand, the Respondents
35 allege that the Appellant's application is an abuse of court process.

34] The concept of abuse of court process is not very precise of definition, but the Nigerian Supreme Court, which decision I consider merely persuasive, of **R-Benkay Nigeria Ltd Vs Cadbury Nigerian PLC SC 29 of 2006** outlines circumstances which give rise to abuse of court process and these include:

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a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of actions on the same matter between the same parties where there exists a right to begin the action.

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b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and the respondents' notice.

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d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by a lower court.

e) Where there is no law supporting a court process or where it is premised on frivolity and recklessness.

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f) Where a party has adopted the system of forum shopping in the enforcement of a conceived right.

g) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. In that case the second action is *prima facie*, vexatious and an abuse of court process.

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35] The Supreme Court of Uganda, in the matter of **Attorney General and Uganda Land Commission v James Mark Kamoga & Another, SCCA No. 8 of 2004**, per J. Mulenga described an abuse of court process as "involves the use of the process for an improper

5 *purpose for which it was not established*". Court relied on the decision
in the *Black's Law Dictionary* [6th Edition] which provided that:

10 *"A malicious abuse of legal process occurs when a party employs it for
some unlawful object, not the purpose for which it is intended by the
law to effect, in other words, a perversion of it."*

36] However, Lord Diplock in **Hunter v Chief Constable of West
Midlands & Anor [1981] 3 ALL ER 727** at **Pg. 729** defined abuse of
process as:

15 *"Abuse of process concerns the inherent powers which any court
of justice must possess to prevent misuse of its procedures in any
way which, although not inconsistent with the literal application
of its procedural rules, would nevertheless be manifestly unfair
to a party to litigation before it, or would otherwise bring the
administration of justice into disrepute among right thinking
people"*

25 37] In **Johnson v Gore-wood & Co [2002] 2 AC 1** at **58-60**, Lord
Millet held that abuse of court process can be no more than a procedural
rule based on the need to protect the process of court from abuse and
the defendant's oppression.

See further: **Halsbury's laws of England (3rd Edition 407-409,
Paragraphs 766-768)**

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38] In reference to the above authorities, the ability of the court to stay or
strike out an action as an abuse of the procedure of the court is a long-
standing remedy, an inherent power of the court, and is provided for in
the Civil Procedure Act Cap 71, Laws of Uganda and the Civil Procedure
rules SI 71-1. The courts should not be clogged by re-determination of

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5 the same disputes; and the private interest that it is unjust for a party to
be vexed twice with litigation on the same subject matter. This is why a
party is precluded from raising, in subsequent proceedings, matters
which could and should have been raised in earlier ones for purposes of
establishing a cause of action.

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39] I observe that the Appellant in the instant matter lodged **Civil Appeal
No. 345 of 2022 Vamee Industries Limited v Attorney
General, Commissioner Land Registration** in the Court of
Appeal (*arising from the High Court Miscellaneous Cause No. 2 of*
15 *2022 in the High Court of Uganda at Mukono*). This court delivered
Judgment on the appeal on 7th August 2023. In that appeal, which was
based on the application for judicial review, the court determined that
the Appellant had the option of a suitable alternative remedy, being an
action for recovery of damages under Section 178 of the Registration of
20 Titles Act, Cap 230 for the address of the grievance of the Appellant in
relation to the suit land. In addition, this Court determined that the
Appellant had a remedy provided under Section 183 of the Registration
of Titles Act Cap 230 to recover damages against Government for loss of
land due to misfeasance by the 1st Respondent. The Appeal was
25 dismissed on this premise.

40] It is an abuse of process to use another remedy under the constitution to
avoid or complement a set procedure. In the case of **Harrikisson v
Attorney General (Trinidad & Tobago) [1980] AC 265 at 268**
30 Lord Diplock held that:

“...the notion that whenever there is a failure by an organ of
government or a public authority or a public officer to comply
with the law this necessarily entails the contravention of some
35 human right or fundamental freedom guaranteed to individuals

5 *by chapter 1 of the constitution is fallacious. The right to apply to*
the High Court under Section 6 of the Constitution for redress
when any human right or fundamental freedom is or is likely to
be infringed, is an important safeguard of those rights and
freedoms; but its value will be diminished if it is allowed to be
10 *misused as a general substitute for normal procedures for*
invoking judicial control of administrative action....the mere
allegation that a human right or fundamental freedom of the
applicant has been or is likely to be contravened is not of itself
sufficient to entitle the applicant to invoke the jurisdiction of the
15 *court under the subsection if it is apparent that the allegation is*
frivolous or vexatious or an abuse of process of court as being
made solely for the purpose of avoiding the necessity of applying
the normal way for the appropriate remedy”

20 41] I therefore find that the Appellant’s choice to institute multiple
applications (under Judicial Review and Enforcement of Human rights)
seeking the same orders was an abuse of court process or the use of the
court process for improper means, which cannot be merely discarded on
account of the provisions of Section 6(5) of the Human Rights
25 (Enforcement) Act 2019. The present appeal and Civil Appeal No. 345 of
2022 are based on the same facts. The Appellant’s rights and orders
sought could have easily been determined in that application and it
served no purpose, except to use court process for improper means to
lodge this application.

30 Ground one is therefore answered in the negative.

42] I would therefore conclude that the learned trial Judge rightly
found that the applicant ought to have brought an ordinary suit to
properly address the Appellant’s grievances about the manner in
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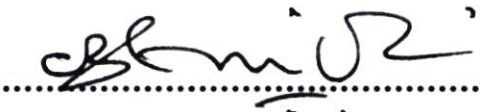
5 which the certificate of title was cancelled. This could not be
adequately done in an application.

43] The resolution of ground 1 renders it unnecessary to consider the
rest of the grounds of appeal. I would conclude that the learned
10 trial Judge rightly found that the Appellant ought to have brought
an action by way of ordinary Plaintiff.

10. Decision.

44] I would dismiss the Appeal. Each party to bear its own costs.

15 Dated at Kampala this^{19th} day of^{April} 2024

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Christopher Gashirabake
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 342 OF 2022

(Coram: R. Buteera DCJ, C. Bamugemereire & C. Gashirabake, JJA)

VAMEE INDUSTRIES LIMITED ::::::::::::::: APPELLANT

VERSUS

1. COMMISSIONER LAND REGISTRATION

2. ATTORNEY GENERAL ::::::::::::::: RESPONDENT

JUDGMENT OF RICHARD BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment of C. Gashirabake, JA in respect of this appeal. I do agree with his reasoning, decision and orders he proposed.

Since C. Bamugemereire, JA, also agrees, this Appeal is dismissed in the terms and orders as proposed by C. Gashirabake, JA in his lead judgment.

Dated at Kampala this^{19th} day of^{April}..... 2024



Richard Buteera

DEPUTY CHIEF JUSTICE

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL No.342 OF 2022

[Coram: Butera, DCJ; Bamugemereire and Gashirabake, JJA]

VAMEE INDUSTRIES LIMITED :::::::::::::::::::::: APPELLANT

VERSUS

1. COMMISSIONER LAND REGISTRATION

2. ATTORNEY GENERAL :::::::::::::: RESPONDENTS

*(Appeal from the Judgment and Orders of the High Court of Uganda at
Mukono miscellaneous Cause No.1 of 2022 before Florence Nakachwa J,
dated 13th July 2022)*

JUDGMENT OF CATHERINE BAMUGEMEREIRE JA

I have had the privilege to read, in draft, the opinion of my learned brother, Christopher Gashirabake JA. I am in agreement with his reasoning, conclusion and orders in respect thereof. I would dismiss the appeal with no order as to costs.

Dated this 19th day of April 2024.



CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL